

# Washington International Law Journal

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Volume 30  
Number 2 *A Global Reckoning: Answering Calls  
for Change*

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3-2021

## Race and Representation: The Legislative Council in Hong Kong During the Reign of Queen Victoria

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### Recommended Citation

Dongsheng Zang, *Race and Representation: The Legislative Council in Hong Kong During the Reign of Queen Victoria*, 30 Wash. L. Rev. (2021).

Available at: <https://digitalcommons.law.uw.edu/wilj/vol30/iss2/9>

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## Race and Representation: The Legislative Council in Hong Kong During the Reign of Queen Victoria

Dongsheng Zang<sup>†</sup>

*Abstract:* Black Americans need not be told that racism is not accidental, nor is it marginal in their lives. The rest of the American society does. In fact, race is a foundational consideration in the development of democracy in Anglo-American history. This article attempts to demonstrate, through colonial history of Hong Kong, how white supremacy played a central role in shaping the British colonial policy during the nineteenth century—the reign of Queen Victoria. Hong Kong was ceded to the British Empire when two ideas in Victorian England were competing to dominate its colonial policy: one was anti-slavery, and the other free trade. Anti-slavery demanded imperial control over British overseas colonies because the Empire became increasingly frustrated by the fact colonists—who were slave owners—refused to carry out abolition. For that reason, senior colonial policymakers preferred new colonies set up as “Crown Colonies,” as it accorded more control to the Crown. On the other hand, overseas colonies were increasingly considered as a financial burden to the Empire. Free-trade advocates—Adam Smith and his followers—pushed for less direct control and more autonomy in the colonies. This view led to representative democracy in Canada, Australia, and New Zealand. Hong Kong was established as a “Crown Colony,” but there was no lack of interest in pushing for democracy. This article is largely based on internal communications between colonial administrators in London and Hong Kong in their debates about the proper policy choice in Hong Kong. It reveals the central consideration of race in deciding the political structure for Hong Kong.

Cite as: Dongsheng Zang, *Race and Representation: The Legislative Council in Hong Kong During the Reign of Queen Victoria*, 30 WASH. INT’L L.J. 284 (2021).

### INTRODUCTION

George Floyd’s execution by Minneapolis police in May 2020,<sup>1</sup> and the subsequent crackdown on the “Black Lives Matter” movement was a full display of undisguised racism backed by naked brutality. It

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<sup>1</sup> Evan Hill et al., *How George Floyd Was Killed in Police Custody*, N.Y. TIMES (Nov. 5, 2020), <https://www.nytimes.com/2020/05/31/us/george-floyd-investigation.html>.

will be remembered as a shameful chapter in United States' racial history. For those of us who have not recovered from the shock, it is not only our obliviousness that has blinded us; it is our denial and our unwillingness to recognize how institutionalized racism is.<sup>2</sup> This article illustrates how racism is not an unfortunate happenstance; it is a cancer that has been deliberately embedded deep in the core of our institutions in the long history of our uncivilization.

This article aims to examine the racist roots of British colonialism and its entangled relations with liberalism during the reign of Queen Victoria (1837–1901) through the lens of Hong Kong's historical experience. Hong Kong was ceded via the Treaty of Nanking,<sup>3</sup> signed on August 29, 1842. On April 5, 1843, Queen Victoria granted a Royal Charter, designating it as “the Colony of Hongkong.”<sup>4</sup> This was during an era when two lines of liberalism in Victorian England were clashing with each other: one line of thinking is represented by the abolitionists in the anti-slave-trade campaigns; the other is the free trade theory advocated by Adam Smith and his followers who were critical of British colonial policies. The clash was over the question of British colonies: abolitionists considered self-government in the colonies an obstacle for implementing the British policy to restrict and eventually eliminate the slave-trade; while free-trade advocates were in favor of, or at least tolerated introduction of, “responsible government” as a liberal solution.

British colonial administrators—including the Secretary of State for the Colonies in London, governors, and senior colonial officers in the British colonies—were caught in this clash. As admirers, disciples, or critics of Adam Smith, Jeremy Bentham, James Mill, John Stuart Mill, and Sir Henry Maine, they were not only participants in the debates, but also caught in the conflicting claims of Victorian liberalism.<sup>5</sup> Race, however, became the common ground bridging the debates' two sides. Between the 1850s and 1860s, colonial administrators and intellectuals formed a consensus that democracy was not and should not be universal.

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<sup>2</sup> For an insightful discussion about how institutionalized racism is, see generally Erika George et al., *Reckoning: A Dialogue About Racism, AntiRacists, and Business & Human Rights*, 30 WASH. INT'L L.J. 171 (2021).

<sup>3</sup> Treaty Between Great Britain and China, Gr. Brit.-China, Aug. 29, 1842, 30 BRITISH AND FOREIGN STATE PAPERS 389, 389–92 (1842) [hereinafter Treaty of Nanking]. The British took control of Hong Kong earlier. See Charles Elliot, *To Her Britannic Majesty's Subjects, Proclamation No. 1*, 10 CHINESE REPOSITORY 63 (1841).

<sup>4</sup> *Royal Charter of the Island of Hongkong, Proclamation No. 1*, 12 CHINESE REPOSITORY 379, 380 (1843).

<sup>5</sup> AMARTYA SEN, POVERTY AND FAMINES: AN ESSAY ON ENTITLEMENT AND DEPRIVATION 161 (1981). On the question of paradoxes in Victorian England, I was inspired by Anita Ramasastry. See generally Anita Ramasastry, *The Parameters, Progressions, and Paradoxes of Baron Bramwell*, 38 AM. J. LEGAL HIST. 322 (1994).

Rather, they thought it should be limited to the Anglo-British race. Therefore, the article argues, failure to introduce democracy in Hong Kong during British rule was not a coincidence; instead, it was an inevitable failure at the core of Victorian liberalism.

The article will proceed as follows. Part I elaborates on the clash in liberalism during the 1830s and the two sides consensus in the 1860s. The clash exemplified itself in debates in London over “responsible government,” which translated into institutional functions of the British colonies’ Legislative Councils. Part II tracks the debates over Hong Kong’s Legislative Council from its formation to the end of Queen Victoria’s reign. Among the governors and senior colonial officers, there was no lack of interest in making the Legislative Council more representative. British merchants in Hong Kong also petitioned for establishing representative democracy. However, dispatches between colonial administrators in Hong Kong and London clearly show race as a fundamental reason to hold back democracy. The consensus formed in the early 1860s became permanent for the remainder of the Victorian era.

## I. THE CLASH INSIDE VICTORIAN LIBERALISM

This Part lays out the background by first presenting both sides of Victorian liberalism: the abolition movement (Section A), and the free trade movement (Section B). Both originated shortly before the American Revolution and became influential in the British Empire in subsequent years. The two schools of thought, however, clashed in 1833 when the British Parliament deliberated the Abolition Act (Section C).<sup>6</sup> A key figure from the abolitionist perspective was Lord Stanley,<sup>7</sup> who blamed colonial legislatures in the West Indies for their resistance to the British policy. Lord Stanley was in favor of central control over the colonies. However, critics of British colonial policy, like Adam Smith, Jeremy Bentham and James Mill, argued against central control, as did Lord Durham, who led efforts to introduce representative government in the Canadian British colonies. By the 1860s, intellectuals such as John Stuart Mill, Sir Henry Maine, and colonial administrators such as Sir George Cornwall Lewis and Lord Carnarvon reached a consensus (Section D). That consensus was essentially what we call white supremacy today.

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<sup>6</sup> Slavery Abolition Act 1833, 3 & 4 Will. 4 c. 73 (UK).

<sup>7</sup> Edward Geoffrey Stanley (1799-1869), 14th Earl of Derby, also known as Lord Stanley after 1834, was Secretary of State for War and the Colonies from 1833 to 1834, and again from 1841 to 1845. *See generally* ANGUS HAWKINS, *THE FORGOTTEN PRIME MINISTER: THE 14TH EARL OF DERBY—ASCENT, 1799–1851* (Oxford 2007).

### A. The Abolition Movement

The best-known case in the British abolition movement is *Somerset v. Stewart*,<sup>8</sup> where Lord Mansfield, Chief Justice of the King's Bench, discharged James Somerset, an enslaved person. Lord Mansfield stated in his 1772 ruling: "The state of slavery is of such a nature, that it is incapable of being introduced on any reasons, moral or political; but only positive law."<sup>9</sup> This is the not the first nor the boldest statement about slavery by an English judge. Francis Hargrave, one of Somerset's attorneys, provided an exhaustive survey of earlier cases on slavery in his brief.<sup>10</sup> What was unique in the *Somerset* litigation was the way it was organized: Granville Sharp, "father" of the abolition movement in Great Britain,<sup>11</sup> funded Somerset's case and recruited able counsel including Hargrave, Serjeant Glynn, and Serjeant Davy.<sup>12</sup>

After the *Somerset* case, Granville Sharp and activists in the abolition movement continued pressing for the cause. In June 1783, the Quakers sent petitions to Parliament, calling for legislative restraints on the slave-trade.<sup>13</sup> In May 1787, a Committee for the Abolition of the

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<sup>8</sup> *Somerset v. Stewart* (1772) 98 Eng. Rep. 499 (KB).

<sup>9</sup> *Id.* at 510. See generally James Oldham, *New Light on Mansfield and Slavery*, 27 J. BRIT. STUD. 45, 56 (1988); William M. Wiecek, *Somerset: Lord Mansfield and the Legitimacy of Slavery in the Anglo-American World*, 42 U. CHI. L. REV. 86, 86–87 (1974).

<sup>10</sup> 1 FRANCIS HARGRAVE, *An Argument in the Case of James Somerset, a Negro, Lately Determined by the Court of King's Bench: Wherein It Is Attempted to Demonstrate the Present Unlawfulness of Domestic Slavery in England*, in JURISCONSULT EXERCITATIONS 1, 9 (London 1811). Hargrave achieved immediate fame for his role in the *Somerset* case. See *Life of the Late Francis Hargrave, Esq.*, 29 LAW MAG. QUART. REV. JURIS. 75, 76 (1843).

<sup>11</sup> THOMAS CLARKSON, 1 THE HISTORY OF THE RISE, PROGRESS, & ACCOMPLISHMENT OF THE ABOLITION OF THE AFRICAN SLAVE-TRADE, BY THE BRITISH GOVERNMENT 208 (Philadelphia, James P. Parke 1808) [hereinafter CLARKSON, HISTORY OF ABOLITION].

<sup>12</sup> PRINCE HOARE, MEMOIRS OF GRANVILLE SHARP, ESQ. COMPOSED FROM HIS OWN MANUSCRIPTS, AND OTHER AUTHENTIC DOCUMENTS IN THE POSSESSION OF HIS FAMILY AND OF THE AFRICAN INSTITUTION 71 (London, Henry Colburn and Co. 1820); see generally Ruth Anna Fisher, *Granville Sharp and Lord Mansfield*, 28 J. OF NEGRO HIST. 381 (1943).

<sup>13</sup> *Petition of the Quakers against the Slave Trade*, in 23 THE PARLIAMENTARY HISTORY OF ENGLAND, FROM THE EARLIEST PERIOD TO THE YEAR 1803: FROM WHICH LAST-MENTIONED EPOCH IT IS CONTINUED DOWNWARDS IN THE WORK ENTITLED "THE PARLIAMENTARY DEBATES" 1026 (William Cobbett ed. 1816). Thomas Clarkson noted that, "[f]rom this time there appears to have been a growing desire in this benevolent society to step out of its ordinary course in behalf of this injured people. It had hitherto confined itself to the keeping of its own members unpolluted by any gain from their oppression. But it was now ready to make an appeal to others, and to bear a more public testimony in their favor." CLARKSON, HISTORY OF ABOLITION, *supra* note 11, at 97–8.

Slave Trade was formed<sup>14</sup> to work alongside the politician William Wilberforce, to pursue legislative measures to end the slave trade.<sup>15</sup> Parliament passed the first act on the slave-trade on July 10, 1788.<sup>16</sup> The Act did not abolish the slave trade altogether; it only set limits of five enslaved African people for every three tons of cargo on the ship.<sup>17</sup> In subsequent years, abolition of slavery continued to occupy a prominent position in Parliament throughout the nineteenth century. First, the slave trade, *i.e.*, purchase, sale, transfer of enslaved people within the British colonies, was “utterly abolished, prohibited and declared to be unlawful” by the Slave Trade Act of 1807.<sup>18</sup> Second, slavery itself was abolished in the British colonies when the 1833 Abolition Act announced that all enslaved people shall be manumitted, set free, and converted to apprenticed laborers.<sup>19</sup> Third, the 1865 Validity of Colonial Laws announced that any colonial law in conflict with an Act of Parliament extending to the colony shall “be and remain absolutely void and inoperative.”<sup>20</sup>

Members of the House of Commons and House of Lords joined the abolition movement based on their Christian faith. William Wilberforce continued leading the efforts after the 1788 Act by bringing more bills to the Commons floor.<sup>21</sup> Sir Thomas Fowell Buxton, member of the House of Commons, moved for a resolution in the Commons in

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<sup>14</sup> CLARKSON, HISTORY OF ABOLITION, *supra* note 11, at 207. Members of the Committee included: Granville Sharp (Chair), Thomas Clarkson, William Dillwyn, Richard Phillips, Samuel Hoare, John Barton, George Harrison, Joseph Hooper, John Lloyd, James Phillips, Joseph Woods, and Philip Sansom.

<sup>15</sup> *Id.* On William Wilberforce, see generally WILLIAM HAGUE, WILLIAM WILBERFORCE: THE LIFE OF THE GREAT ANTI-SLAVE TRADE CAMPAIGNER (2008).

<sup>16</sup> Slave Trade Act 1788, 28 Geo. 3 c. 54 (Gr. Brit.) [hereinafter, Slave Trade Act of 1788]. See James W. LoGerfo, *Sir William Dolben and “The Cause of Humanity”: The Passage of the Slave Trade Regulation Act of 1788*, 6 EIGHTEENTH-CENTURY STUD. 431, 431 (1973) for the leading role of Sir William Dolben in passing the act.

<sup>17</sup> Slave Trade Act 1788, 28 Geo. 3 c. 54 (Gr. Brit.). The Act was renewed between 1789 and 1795 and between 1797 and 1798. In 1799, the previous acts’ provisions were made permanent through the Slave Trade Act of 1799. Slave Trade Act 1799, 39 Geo. 3. c. 80 (Gr. Brit.).

<sup>18</sup> Slave Trade Act 1807, 47 Geo. 3 c. 36 (UK).

<sup>19</sup> Slavery Abolition Act 1833, 3 & 4 Will. 4 c. 73, § 12 (UK).

<sup>20</sup> Colonial Laws Validity Act 1865, 28 & 29 Vict. c. 63 § 2 (UK).

<sup>21</sup> Shortly after the 1788 Act, Wilberforce introduced bills to the House of Commons and led the debate from 1791 to 1796. See HC Deb (18 Apr. 1791) (26) col. 250; HC Deb (18 Feb. 1796) (32) col. 737. In addition to his parliamentary activities, Wilberforce published two pamphlets on slave trade. See generally WILLIAM WILBERFORCE, A LETTER ON THE ABOLITION OF THE SLAVE TRADE, ADDRESSED TO THE FREEHOLDERS OF YORKSHIRE (London, Luke Hansard & Sons 1807); WILLIAM WILBERFORCE, AN APPEAL TO THE RELIGION, JUSTICE, AND HUMANITY OF THE INHABITANTS OF THE BRITISH EMPIRE IN BEHALF OF THE NEGRO SLAVES IN THE WEST INDIES (London, J. Hatchard and Son 1823).

May 1823, recognizing “[t]hat the State of Slavery is repugnant to the principles of the British constitution and of the Christian religion.”<sup>22</sup> Buxton, now Wilberforce’s successor in the cause,<sup>23</sup> announced in the House of Commons that, “[t]he object at which we aim, is the extinction of slavery—nothing less than the extinction of slavery—in nothing less than the whole of the British dominions . . .”<sup>24</sup> In 1810, Henry Brougham gave a speech in the House of Commons where he suggested that Great Britain reach out to other countries and seek international cooperation on the slave trade.<sup>25</sup> Brougham became Lord Chancellor from 1830 to 1834 and he played a prominent role in leading the efforts to pass the 1833 Act.<sup>26</sup> In a speech at the House of Lords,<sup>27</sup> he challenged his fellow lords to imagine “[t]he African, placed on the same footing with other men, becomes in reality our fellow-citizen—to our feelings, as well as in his own nature, our equal, our brother. No difference of origin or of color can now prevail to keep the two castes apart.”<sup>28</sup> Lord Brougham’s speech was a nineteenth century rejection of white supremacy. He recognized that enslaved people were entitled for freedom, just like the English men of his days: “The slave has shown . . . that he is as fit for his freedom as any English peasant, ay, or any Lord whom I now address.”<sup>29</sup>

From the 1780s to the 1830s, the abolition movement emerged in Great Britain as a powerful legal and political movement driving its

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<sup>22</sup> HC Deb (15 May 1823) (9) col. 275 (UK).

<sup>23</sup> William Wilberforce wrote a letter to Buxton on May 24, 1821, suggesting a partnership with him. See MEMOIRS OF SIR THOMAS FOWELL BUXTON, BARONET, WITH SELECTIONS FROM HIS CORRESPONDENCE 126 (Charles Buxton ed. 1849). In autumn of 1822, Buxton decided to take on the issue of slavery. *Id.* at 130.

<sup>24</sup> HC Deb (15 May 1823) (9) col. 265 (UK).

<sup>25</sup> Henry Brougham, Speech on the Slave Trade, House of Commons (June 14, 1810), in 10 WORKS OF HENRY LORD BROUGHAM 3, 93 (1873); see THOMAS CLARKSON, HISTORY OF ABOLITION, 4 (1st ed. 1968) (1839) (ebook) (Thomas Clarkson noticed his contribution to the abolition movement). This led to an international development in bilateral treaties with the United States and other countries during the anti-slave trade area. See TREATIES, CONVENTIONS, AND ENGAGEMENTS FOR THE SUPPRESSION OF THE SLAVE TRADE (London, T.R. Harrison 1844). The international courts, as Professor Jenny S. Martinez pointed out, were the first human rights courts in the history of international law. Jenny S. Martinez, *Antislavery Courts and the Dawn of International Human Rights Law*, 117 YALE L.J. 550, 550 (Jan. 2008); JENNY S. MARTINEZ, THE SLAVE TRADE AND THE ORIGINS OF INTERNATIONAL HUMAN RIGHTS LAW (2012).

<sup>26</sup> HARRY POTTER, THE DRUM MAJOR OF LIBERTY: HENRY BROUGHAM, IN LAW, LIBERTY AND THE CONSTITUTION: A BRIEF HISTORY OF THE COMMON LAW, 218–23 (2015) (ebook); Monroe H. Freedman, *Henry Lord Brougham - Advocating at the Edge for Human Rights*, 36 HOFSTRA L. REV. 311 (2007).

<sup>27</sup> HENRY BROUGHAM, *Speech on Emancipation of Negro Apprentices* (Feb. 20, 1838), in 10 WORKS OF HENRY LORD BROUGHAM 3, 243 (1873) [hereinafter Brougham *Speech* 1838].

<sup>28</sup> *Id.* at 275.

<sup>29</sup> *Id.* at 279.

policy within the British empire. Because slavery had been abolished in Great Britain but remained lawful in its colonies, abolition ultimately became a question of colonial policy.

### *B. The Free Trade Movement*

Among the abolitionists, Thomas Clarkson considered Adam Smith one of slavery's the early critics.<sup>30</sup> In his 1763 Glasgow lectures, Smith explained that "[i]t is almost needless to prove that slavery is a bad institution even for free men."<sup>31</sup> As if he had anticipated the abolition movement itself, Smith clearly gave some thought to the question, but he was not hopeful: "[i]n a free government the members would never make a law so hurtful to their interest, as they might think the abolishing of slavery would be."<sup>32</sup> By contrast, Smith speculated, "[s]lavery, then, may be gradually softened under a monarch, but not entirely abolished, because no one person whatever can have so much authority as to take away at once the most considerable part of the nation's property, because this would occasion a general insurrection."<sup>33</sup>

In *The Wealth of Nations*,<sup>34</sup> Smith continued his critique of slavery.<sup>35</sup> However, his analytical method shifted to economics, and his interest shifted to British colonial policy. *The Wealth of Nations* was published on March 9, 1776,<sup>36</sup> less than four months before the American Declaration of Independence. Naturally, the book was preoccupied with the growing tension between the Britain and its colonies in North America.<sup>37</sup> Developed as a critique of British colonial policy, *The Wealth of Nations* argued that colonies were too costly for Britain: "[u]nder the present system of management, therefore, Great

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<sup>30</sup> CLARKSON, HISTORY OF ABOLITION, *supra* note 11, at 72.

<sup>31</sup> ADAM SMITH, LECTURES ON JUSTICE, POLICE, REVENUE AND ARMS 99 (Oxford, Clarendon Press 1896).

<sup>32</sup> *Id.* at 96.

<sup>33</sup> *Id.* at 97.

<sup>34</sup> ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF WEALTH OF NATIONS (1776). The book [hereinafter, WEALTH OF NATIONS].

<sup>35</sup> For example, in *The Wealth of Nations*, Smith continued his comparison of monarchy and free government in their treatment of slaves. Smith asserted that it is harder for a judge to protect slaves in a free country because "in a free country, where the master is perhaps either a member of the colony assembly, or an elector of such a member," which renders it "more difficult for him to protect the slave." ADAM SMITH, *Of Systems of Political Economy*, in THE WORKS OF ADAM SMITH 138, 395 (London, 1811). THE WEALTH OF NATIONS, Book IV, Chapter VII, at 395 (3 Works 395).

<sup>36</sup> NICHOLAS PHILLIPSON, ADAM SMITH: AN ENLIGHTENED LIFE 214 (University Press ed., 2012).

<sup>37</sup> James Ashley Morrison, *Before Hegemony: Adam Smith, American Independence, and the Origins of the First Era of Globalization*, 66 INT'L ORG. 395, 409 (2012); Andrew S. Skinner, *Adam Smith: The Demise of the Colonial Relationship with America*, 27/28 PAPERS IN POL. ECON. 113, 121 (1996).



Britain derives nothing but loss from the dominion which she assumes over her colonies.”<sup>38</sup> The book discusses colonial representation in the British Parliament, but concluded that such action was unlikely to be accepted by either side.<sup>39</sup> The essential message in *The Wealth of Nations* is perhaps best reflected in Smith’s liberal notion of international order based on free trade:

If it was adopted, however, Great Britain would not only be immediately freed from the whole annual expense of the peace establishment of the colonies, but might settle with them such a treaty of commerce as would effectually secure to her a free trade, more advantageous to the great body of the people, though less so to the merchants, than the monopoly which she at present enjoys.<sup>40</sup>

Adam Smith’s critique of colonialism was fully embraced by Jeremy Bentham, a radical philosopher and social reformer. In 1793, Jeremy Bentham delivered the “Emancipate your Colonies” speech at the National Convention of France.<sup>41</sup> He asked the French: “Is it for their advantage to be governed by you rather than by themselves? Is it for your advantage to govern them, rather than leave them to themselves?”<sup>42</sup> During this period, Bentham was working on a long essay on political economy that generally addressed colonial policy.<sup>43</sup> Bentham continued Adam Smith’s thesis that colonies were a burden to Britain: “[a]s a means of increasing the general wealth of a country, or of increasing the revenue of the mother-country, it is a very improper measure. All the common ideas upon this subject are founded in illusions.”<sup>44</sup> Bentham asked his audience: “Ought colonies already possessed to be

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<sup>38</sup> ADAM SMITH, *Of Systems of Political Economy*, in THE WORKS OF ADAM SMITH 138, 443 (London, 1811).

<sup>39</sup> *Id.* at 448–57.

<sup>40</sup> *Id.* at 444.

<sup>41</sup> JEREMY BENTHAM, *Emancipate Your Colonies: Addressed to the National Convention of France as 1793* (1830), in 4 WORKS OF JEREMY BENTHAM 407 (London, John Bowring ed., 1843).

<sup>42</sup> *Id.* at 409.

<sup>43</sup> Bentham’s biographer Charles Milner Atkinson noted, “So early as 1793 Bentham had himself written a long essay on ‘Political Economy,’ some portions of which appeared in [French] in 1798.” CHARLES MILNER ATKINSON, JEREMY BENTHAM: HIS LIFE AND WORK 170 (1905). Atkinson noted that some of these manuscripts are rendered into English as *The Rationale of Reward* (1825) and *A Manual of Political Economy* that first appeared in John Bowring’s collection. See JEREMY BENTHAM, *A Manual of Political Economy*, in 3 WORKS OF JEREMY BENTHAM 33, 33 (London, John Bowring ed., 1843) [hereinafter Bentham, *A Manual of Political Economy*].

<sup>44</sup> Bentham, *supra* note 43, at 52.

emancipated?” Bentham answered “Yes, certainly; if we only consider the saving of the expenses of their government, and the superior advantages of a free commerce.”<sup>45</sup>

James Mill, Bentham’s disciple who had formed a strong bond with Bentham beginning in 1808, agreed with Adam Smith and Bentham on their critiques of colonialism. Mill’s book, *The History of British India* (1817),<sup>46</sup> the first general history of India under British rule,<sup>47</sup> was unmistakably a critique of the British colonial policy. Mill exposed violence, cruelty, oppression, and misconducts of the governors and servants of the East India Company. Mill pointed out that the expectation that India would bring vast wealth and revenue was delusional.<sup>48</sup> He explained that this was because constant wars and conquests repeatedly exhausted revenue: “[I]arge sums had been obtained from new-made conquests, and the charge to be incurred for their government was not yet ascertained. As soon as that charge had time to swell to its natural, that is, its utmost limits, the disbursements of the Indian government outran its receipts.”<sup>49</sup> In 1821, Mill reframed the above observations in general economic terms. In *Elements of Political Economy* (1821),<sup>50</sup> he concluded that monopoly trade with colonies, whether exclusively through a company like the East India Company or not, never achieved a level of efficiency like free trade.

James Mill’s critique was well received.<sup>51</sup> He even received favorable messages from the East India Company, which eventually led to his appointment to the India House in 1819.<sup>52</sup> Mill’s critique incorporated those of East India Company officers, including Sir Thomas Munro and Sir John Malcolm. Malcolm favored indirect rule: “If policy requires that we should govern a considerable part of India through the agency of its Native princes and chiefs, it is our duty to

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<sup>45</sup> *Id.*

<sup>46</sup> JAMES MILL, HISTORY OF BRITISH INDIA 460–468 (London, Baldwin, Cradock, and Joy 1817) [hereinafter MILL, HISTORY OF BRITISH INDIA]. See generally J. Majeed, *James Mill’s ‘The History of British India’ and Utilitarianism as a Rhetoric of Reform*, 24 MOD. ASIAN STUD. 209 (1990).

<sup>47</sup> *Mr. Mill’s History of British India*, 6 THE ASIATIC J. 42, 42 (1818).

<sup>48</sup> JAMES MILL, *supra* note 46, at 362.

<sup>49</sup> *Id.*

<sup>50</sup> See generally JAMES MILL, ELEMENTS OF POLITICAL ECONOMY (London, Baldwin, Cradock, and Joy 1821).

<sup>51</sup> The book was positively reviewed by *Edinburgh Review*, a journal run by Bentham’s disciples, 30 THE EDINBURGH REV. (1818). *The Asiatic Journal* reviewed the book and commented that Mill’s book “in all [aspects] renders history instructive, and which we consider its higher and nobler parts, the historian of British India stands without a single rival.” *Mr. Mill’s History of British India*, 6 THE ASIATIC J. 42, 43 (1818).

<sup>52</sup> ALEXANDER BAIN, JAMES MILL: A BIOGRAPHY 185 (London, Longmans, Green, and Co. 1882).

employ all our moral influence and physical power to strengthen, instead of weakening, these royal instruments of government.”<sup>53</sup>

### *C. The Clash in the 1830s*

The first clash between the anti-slavery free-trade movements was in the 1830s, over enforcing imperial laws in the British colonies. In April 1833, Lord Stanley was appointed as Secretary of State for War and the Colonies, overseeing the passage of the Abolition Bill.<sup>54</sup> On May 14, 1833, Stanley spoke at the House of Commons.<sup>55</sup> He referred to an earlier effort in Parliament:

Parliament, at the time, looked with confidence to the co-operation of the colonial legislatures. It was thought that the voice of authoritative admonition—that the tone of friendly warning—that the expression of the feelings of this country—that the expression of the opinion of Parliament, would not be lost upon the colonial legislature . . . In the expectation then formed (now upwards of eleven years ago) of the co-operation of the colonial legislatures in the West Indies, toward the extinction of slavery, Parliament and the country have been grievously disappointed.<sup>56</sup>

Lord Stanley referred to an Order in Council issued in 1824 to the British colonies, which was “immediately put into operation in those colonies, and remained in force until subsequently altered by another Order in Council in 1830.”<sup>57</sup> He then asked: “But how were these salutary and humane provisions received by the colonial legislatures in 1824? Without one single exception, they were unanimously rejected by every colony having a legislative assembly of its own.”<sup>58</sup> Lord Stanley suggested:

It will be necessary, in order to ensure the success and efficiency of the plan, to supply that, the want of which has rendered from enactments null and of no effect—namely, something of an executory power. It will be necessary for the House to distribute through the chartered colonies, as they have already through the

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<sup>53</sup> SIR JOHN MALCOLM, *A MEMOIR OF CENTRAL INDIA* 266 (London, Printed for Kingsbury, Parbury & Allen 1824).

<sup>54</sup> HAWKINS, *supra* note 7, at 125–27.

<sup>55</sup> HC Deb (14 May 1833) (17) cols. 1193–262 (UK).

<sup>56</sup> *Id.* at 48–49.

<sup>57</sup> *Id.* at 50.

<sup>58</sup> *Id.*

Crown colonies, stipendiary magistrates, —appointed by the Crown, —uninfluenced by the local assemblies, —free from local passions and unbiased by party prejudices, —who will administer equal justice to the rich and poor, the black and the white; who will watch over and protect the negro in his incipient state of freedom, and will aid and direct his inexperience in forming a contract with his master which must have so material an effect upon his future life.<sup>59</sup>

Around the time of Lord Stanley's speech in the House, a group of colonists interested in colonizing South Australia were working on their proposal to colonize it. In July 1832, they submitted a proposal to Lord Goderich, Lord Stanley's predecessor, with an enclosed draft charter for approval.<sup>60</sup> The Secretary of State, however, responded negatively. Lord Goderich told them that "his Majesty's Government could not recommend to Parliament a measure so entirely subversive, in one part of his Majesty's dominions, of those Royal prerogatives which, for the common benefit of all his subjects, it is his Majesty's duty to maintain."<sup>61</sup> By the time the colonists rewrote the charter—this time in the form of a joint stock company—and re-submitted it in July 1833,<sup>62</sup> it was Lord Stanley, as Secretary of State, who turned them down.<sup>63</sup> His rationale was that the proposal gave the colonists too much unchecked power.<sup>64</sup> Lord Stanley insisted that the proposed colony must be subject to the Crown's control.<sup>65</sup>

One frustrated colonist, George Grote, complained that the Secretary of State was confusing chartered colony with a Crown colony,

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<sup>59</sup> *Id.* at 79.

<sup>60</sup> Copy of a Letter from R. Torrens Esq. to Lord Goderich (July 9, 1832) in Correspondence in the Colonial Department Relative to South Australia, in 4 ACCOUNTS AND PAPERS 365, 371–87 (1841).

<sup>61</sup> Copy of a Letter from R. W. Hay Esq. to R. Torrens Esq. (July 17, 1832), in 4 ACCOUNTS AND PAPERS 365, 388 (1841) (Robert William Hay was a British public official writing on behalf of Lord Goderich in his capacity as the Permanent Under-Secretary of State for the Colonies).

<sup>62</sup> Copy of a Letter from W. W. Whitmore Esq., M.P., to the Right Honorable E. G. Stanley (July 6, 1833), in 4 ACCOUNTS AND PAPERS 365, 391 (1841).

<sup>63</sup> Copy of a Letter from the Right Hon. E. G. Stanley to W. W. Whitmore Esq., M.P. (Aug. 22, 1833), in 4 ACCOUNTS AND PAPERS 365, 393 (1841).

<sup>64</sup> *Id.*

<sup>65</sup> Copy of a Letter from J. Lefevre Esq. to W. W. Whitmore (Mar. 17, 1834), in 4 ACCOUNTS AND PAPERS 365, 406–7 (1841).

two fundamentally different types of colonization.<sup>66</sup> The “chartered colony” model Grote mentioned had a long tradition dating back to the Sixteenth century during the reign of Queen Elizabeth I.<sup>67</sup> The “chartered colony” model, through a charter granted by the Crown, conferred upon colonists proprietary rights to the land and self-government.<sup>68</sup> The model Lord Stanley insisted on was closer to that of a “Crown colony,” which was based on royal prerogatives and royal control. George Grote rightly assessed that “Mr. Stanley’s determination puts an end to the project of a chartered colony” in Australia.<sup>69</sup>

However, such a policy faced a powerful backlash, ignited by the 1837 rebellions in Canada.<sup>70</sup> In 1838, Lord Durham was named Governor General and High Commissioner of British North America.<sup>71</sup> His main task was to investigate Canada’s political situation after the Rebellions of 1837 in Upper Canada (Ontario) and Lower Canada (Quebec) and make recommendations as to the necessary reforms.<sup>72</sup> In his recommendations, Lord Durham called for attention to the colonies’ constitution.<sup>73</sup> Lord Durham concluded that “[t]he defects of the colonial constitution necessarily brought the executive Government into collision with the people. . . .”<sup>74</sup> The solution Lord Durham proposed was representative democracy.<sup>75</sup>

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<sup>66</sup> Grote wrote:

A colony founded by charter is one example of that delegation of authority, which in perpetual succession has for ages been a leading principle of the British Government; while a colony founded by the Crown is an example of that central authority, acting at whatever distance from the seat of government, by means of temporary agents, which is a leading principle of the French Government.

Copy of a Letter from George Grote Esq., M.P., to John Lefevre Esq. (Mar. 21, 1834), in 4 ACCOUNTS AND PAPERS 365, 408 (1841).

<sup>67</sup> In February 1834, colonists in Australia submitted a brief summarizing all the letters patent or charters granted by the Crown since Queen Elizabeth. Copy of a Letter from the Provisional Committee of the South Australian Association to the Right Honorable E. G. Stanley (Feb. 21, 1834), in 4 ACCOUNTS AND PAPERS 365, 393 (1841).

<sup>68</sup> For example, the colonies in North America established prior to the American Revolution. Samuel Lucas, who collected these charters and republished them in 1850, commented that, “the Colonies enjoyed ample powers of *self-government*, irrespective of the form which that government assumed.” SAMUEL LUCAS, CHARTERS OF THE OLD ENGLAND COLONIES IN AMERICA xi (London, John W. Parker, West Strand 1850) (emphasis in original).

<sup>69</sup> *Id.*

<sup>70</sup> F. BRADSHAW, SELF-GOVERNMENT IN CANADA AND HOW IT WAS ACHIEVED: THE STORY OF LORD DURHAM’S REPORT 90–101 (1903).

<sup>71</sup> *Id.* at 4.

<sup>72</sup> *Id.*

<sup>73</sup> THE EARL OF DURHAM, REPORT ON THE AFFAIRS OF BRITISH NORTH AMERICA 63 (1839).

<sup>74</sup> *Id.* at 71.

<sup>75</sup> *Id.* at 73.

By July 1840, Parliament passed the Union Act for Canada.<sup>76</sup> In the newly formed Province of Canada, the Act permitted the creation of a representative body—the Legislative Assembly—based on elections, alongside the Legislative Council.<sup>77</sup> The Legislative Council continued to be under the Crown’s control: the Crown has the power to appoint its members,<sup>78</sup> and once appointed, the member hold the seat for life.<sup>79</sup> The South Australia Act established a similar constitutional structure on July 30, 1842,<sup>80</sup> except that the representative body is called the General Assembly. On the same day, the British Parliament granted representative government to New South Wales and Van Diemen’s Land by following a different model: no separate representative body was introduced. The Legislative Council itself was reformed to allow a proportion of elected members.<sup>81</sup> However, New South Wales had to wait until 1855 to adopt a bicameral system like South Australia and Canada, by introducing the Legislative Assembly.<sup>82</sup>

In subsequent years, the British Parliament authorized a number of colonies to introduce similar “responsible governments,” under slightly different names. In August 1842, Newfoundland set up its representative body called the House of Assembly.<sup>83</sup> In 1846, New Zealand established the House of Representatives.<sup>84</sup> In 1849, Vancouver Island established the House of Assembly.<sup>85</sup> In 1850, Cape of Good Hope was authorized to establish House of Assembly.<sup>86</sup> That same year, the British Parliament passed a general statute for the Australian colonies too.<sup>87</sup> In 1855, Victoria called it the Legislative Assembly.<sup>88</sup> In 1855, Van Diemen’s Land, now independent from New South Wales, changed

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<sup>76</sup> British North America Act 1840, 3 & 4 Vict. c. 35.

<sup>77</sup> British North America Act 1840, 3 & 4 Vict. c. 35., arts. III, XI.

<sup>78</sup> British North America Act 1840, 3 & 4 Vict. c. 35., art. IV.

<sup>79</sup> British North America Act 1840, 3 & 4 Vict. c. 35., art. V.

<sup>80</sup> South Australia Act 1842, 5 & 6 Vict. c. 61.

<sup>81</sup> Australian Constitutions Act 1842, 5 & 6 Vict. c. 76.

<sup>82</sup> New South Wales Constitution Act 1855, 18 & 19 Vict. c. 54.

<sup>83</sup> Newfoundland Act 1842, 5 & 6 Vict. c. 120.

<sup>84</sup> New Zealand Constitution Act 1846, 9 & 10 Vict. c. 103; New Zealand Constitution Act 1852, 15 & 16 Vict. c. 72, § 32 (UK).

<sup>85</sup> QUEEN VICTORIA, ROYAL GRANT OF VANCOUVER’S ISLAND (1849), *reprinted in* DUNCAN GEORGE FORBES MACDONALD, BRITISH COLUMBIA AND VANCOUVER’S ISLAND 334, 336 (1862).

<sup>86</sup> Copy of a Dispatch from Earl Grey to Governor Sir H. G. Smith, Bart., G.C.B. (Jan. 31, 1850), *in* PAPERS RELATIVE TO THE ESTABLISHMENT OF REPRESENTATIVE LEGISLATURE AT THE CAPE OF GOOD HOPE 6, 6 (Trelawny Saunders ed., 1851).

<sup>87</sup> Australian Constitutions Act 1850, 13 & 14 Vict. c. 59 (UK).

<sup>88</sup> Victoria Constitution Act 1855, 18 & 19 Vict. c. 55 (UK).

its name to Tasmania, and set up the House of Assembly.<sup>89</sup> And in 1859, Queensland was converted into a separate colony from New South Wales, establishing its Legislative Assembly.<sup>90</sup>

Between the 1830s and 1840s, two separate movements were unfolding at the same time within the British Empire. On the one hand, it was the abolition of the slave-trade based on Christian values. The abolition was driven by Great Britain against the interests of its colonists. On the other hand, there was the colonies' growing demand for self-government. Both the empire's practical needs and teachings of Adam Smith, Jeremy Bentham, James Mill, pointed towards a direction of colonial independence. There were no other liberal principles to reconcile the conflicting demands between these two fundamental values, until British intellectuals and colonial administrators recognized race as the decisive factor. This was accomplished through the work of Sir George Cornwall Lewis, Sir Henry Maine and John Stuart Mill from the 1840s and 1860s.

*D. Race and Responsible Government: Debates in the  
1840s-1860s*

Sir George Cornwall Lewis started his intellectual journey from his groundwork in the tiny British colony of Malta. Malta became under British rule in 1800.<sup>91</sup> In April 1835, King William IV, in his Royal Instructions to the Lieutenant Governor, authorized a Council consisting of seven members, with four official and three unofficial members.<sup>92</sup> "Unofficial members" here are members appointed by the Lieutenant Governor,<sup>93</sup> rather than the Crown. On July 31, 1835, George Mitrovich, a Maltese man living in London, published a pamphlet, *The Claims of the Maltese*, demanding representative institutions.<sup>94</sup> In

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<sup>89</sup> In Tasmania, a constitutional act was passed by the local legislature. An Act to establish a Parliament in Van Diemen's Land and to Grant a Civil List to Her Majesty 1854, 18 Vict. No. 17, *reprinted in* 49 ACCOUNTS AND PAPERS 34 (1870). The new law, assented to by Queen Victoria on May 1, 1855, was promulgated on Oct. 24, 1855 and took effect. *See generally* Edwin Cradock Nowell, *Fifty Years of Responsible Government in Tasmania*, J. PARLIAMENT TAS. (1907); W. A. TOWNSLEY, *THE STRUGGLE FOR SELF-GOVERNMENT IN TASMANIA, 1842-1856* (1951).

<sup>90</sup> Letters Patent Erecting Colony of Queensland June 6, 1859, *reprinted in* 5 J. LEGIS. COUNCIL N.S.W. (Session 1859-60) 399-406 (1860), also available at *Documenting Democracy*, MUSEUM OF AUSTRALIAN DEMOCRACY, <https://www.foundin.gov.au/item-did-60.html> (last visited Dec. 11, 2020).

<sup>91</sup> REV. HENRY SEDDALL, *MALTA: PAST AND PRESENT* 219 (1870).

<sup>92</sup> Extract of a Dispatch from the Earl of Aberdeen to Lieutenant Governor Sir F.C. Ponsonby (Apr. 1, 1835), *in* 8 PARLIAMENTARY ACCOUNTS AND PAPERS 551, 552 (1838) [hereinafter *MALTA REPORTS*].

<sup>93</sup> *Id.* at 552.

<sup>94</sup> GEORGE MITROVICH, *THE CLAIMS OF THE MALTESE, FOUNDED UPON THE PRINCIPLES OF JUSTICE* 7 (1835).

September 1836, legal theorist John Austin and his student George Cornwall Lewis were appointed by King William IV as Commissioners of Inquiry to investigate these demands.<sup>95</sup> Austin and Lewis spent the following year-and-a-half studying in Malta and made a series of recommendations for reforming and restructuring the government, including freedom of the press, education, and tariffs. But their reports contained no mention of representative institutions, which King William IV specifically requested. Two years later in March, in the final days of their stay in Malta, Lewis wrote in a letter to his father that “we have collected our materials, though the report [on *consiglio popolare*] is not written.”<sup>96</sup> By December of the following year, the recommendation was still not written. In his letter to John Austin, Lewis stated: “There is nothing in our recommendation which ought to suggest the idea that Malta would, in the case of their adoption, cease to be a Crown colony.”<sup>97</sup> In his book, *An Essay on the Government of Dependencies*, published shortly after the Malta study, Sir George Cornwall Lewis noted that “[a]ll the English colonies established in America and the West India islands, during the seventeenth, and the beginning of the eighteenth century, received a representative constitution, imitated, for the most part, from that of the mother-country.”<sup>98</sup> However, Lewis noted a shift in policy, “[s]ince the close of the American war, it has not been the policy of England to vest any portion of the legislative power of the subordinate government of a dependency in a body elected by the inhabitants.”<sup>99</sup>

Most likely, Lewis and Austin were simply following this policy in not recommending representative institutions in their Malta reports.<sup>100</sup> It took Malta a decade to secure a slight increase in

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<sup>95</sup> Commissions Granted by King William IV, enclosed to Dispatch from the Commissioners to Lord Glenelg (Nov. 3, 1836), in MALTA REPORTS at 419.

<sup>96</sup> Letter from Sir George Cornwall Lewis to his father (Mar. 23, 1838), in LETTERS OF THE RIGHT HON. SIR GEORGE CORNEWALL LEWIS, BART. 100, 100 (Rev. Sir Gilbert Frankland Lewis ed. 1870) [hereinafter LEWIS LETTERS].

<sup>97</sup> Letter from Sir George Cornwall Lewis to John Austin (Dec. 2, 1839), in LEWIS LETTERS, *supra* note 96, at 104.

<sup>98</sup> SIR GEORGE CORNEWALL LEWIS, AN ESSAY ON THE GOVERNMENT OF DEPENDENCIES 156 (1841) [hereinafter AN ESSAY ON DEPENDENCIES].

<sup>99</sup> *Id.* at 160. In a letter to Austin and Lewis in September 1836, Lord Glenelg reminded both that “you will . . . in every party of your researches and proceedings, keep steadily in recollection the peculiar character which Malta has borne . . . and which it must continue to bear, as a Naval and Military Station of the highest importance.” Letter from Lord Glenelg to the Commissioners (Sept. 16, 1836), quoted in WILFRID E. RUMBLE, THE THOUGHT OF JOHN AUSTIN: JURISPRUDENCE, COLONIAL REFORM, AND THE BRITISH CONSTITUTION 147 (1985). Rumble commented that, “These instructions obviously limited the kind of changes that the Commissioners could propose.” *Id.* at 148.

<sup>100</sup> John Austin, a disciple of Jeremy Bentham, wrote in 1859 he has probably had shifted away from Bentham even before his appointment as a Commissioner for Malta:



representation in their government. In 1849, by Letters Patent,<sup>101</sup> Queen Victoria authorized a Council of Government that consisted of—in addition to the Governor—nine other members appointed by the Crown, and eight unofficial members through election. Despite demands for introduction of representative institutions,<sup>102</sup> this structure remained intact until the end of the Queen Victoria's reign.<sup>103</sup>

Lewis and Austin did not overlook the question of race in Malta. Not only were they clearly conscious of race,<sup>104</sup> but they also wanted to address the issue by recommending native Maltese to the government's departments.<sup>105</sup> They were fully aware that systematic exclusion of Maltese from superior government offices "has produced the evil consequences which were produced in Ireland by the civil disabilities imposed upon Catholics by the law."<sup>106</sup> They even "carefully" compared the differences between the Maltese with the Indians:

If the moral and intellectual condition of the Maltese were as low as that of the Hindoos, it might be necessary that the civil government of the island should be mainly administered by Englishmen. But

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"Even before the Reform of 1832, I had rejected his [Bentham's] *radical* politics; and had returned to the opinion (Whiggism, Liberal Conservatism, or whatever else it may be called) which is held, with shades of difference, by the generality of instructed Englishmen." JOHN AUSTIN, *A PLEA FOR THE CONSTITUTION* vi (1859) (emphasis in original). Austin continued, "I have said that the bulk of the working classes are not yet qualified for political power: that the lower classes of the middle class ought not to predominate in the House of Commons: that the aristocratical influences in the present composition of that Assembly are a condition of the *free* government under which we are happy enough to live." *Id.* This suggests that Austin probably did not have much struggle in following the instruction from Lord Glenelg noted in note 103.

<sup>101</sup> A law to regulate and appoint the Election of members to serve in the council of government of Malta, reproduced in *LAW, LETTERS PATENT, AND OTHER PAPERS IN RELATION TO THE CONSTITUTION ON THE COUNCIL OF GOVERNMENT OF MALTA* 2–19 (1889). See generally GUGLIELMO RAPINET, *LECTURES ON THE BRITISH CONSTITUTION AND ON THE GOVERNMENT OF MALTA* (1883).

<sup>102</sup> Letter from Dr. Mizzi to Colonial Office, in *FURTHER CORRESPONDENCE RESPECTING THE CONSTITUTION AND ADMINISTRATION OF MALTA* 1–6 (1888).

<sup>103</sup> Letters Patent Providing for the Administration of the Government of the Island of Malta and its Dependencies (June 3, 1903), reproduced in 8 *STATUTORY RULES AND ORDERS REVISED* 1–13 (1904).

<sup>104</sup> "The people are an Arab race, descended from the Saracens, who obtained possession of the island; their physiognomy bears a striking resemblance to the Jewish." Letter from Sir George Cornewall Lewis to Sir Edmund Head (Apr. 3, 1837), in LEWIS *LETTERS*, *supra* note 96, at 75.

<sup>105</sup> Austin and Lewis recommend "[t]he appointment of natives to civil offices would be far more acceptable to the people than the appointment of Englishmen, and would thus tend to render the Government popular." Report Relative to the Employment of Maltese in Executive Offices No. 12, (Feb. 12, 1838), in *MALTA REPORTS*, *supra* note 95, at 514.

<sup>106</sup> *MALTA REPORTS*, *supra* note 95, at 514.

though the Maltese are not so advanced in civilization as we could desire, and as they would be if they had enjoyed a liberty of the press, and good institutions for education, yet they are an European and Christian community, and far superior in institutions, manners, science, and arts to the most advanced of the Asiatic nations.<sup>107</sup>

In his book, Sir George Cornewall Lewis elaborated his reasons behind the above recommendation: “[a] main cause of the moderation which is sometimes evinced by a party in opposition, is their chance of being called to office.”<sup>108</sup> But Lewis was fundamentally skeptical of representative institutions in the British colonies. For him, “[a] self-governing dependency . . . is a contradiction in terms.”<sup>109</sup> When looking for a solution, Lewis examined Adam Smith’s proposal that colonies send their representatives to the British Parliament.<sup>110</sup> However, Lewis concluded that was not a solution, “even if the colonies had sent representatives to Parliament, agreeably to the plan recommended by Adam Smith, they must still have been governed as dependencies . . . [thus] they would still have thought themselves in need of popular securities against the executive department of their local government.”<sup>111</sup> Fundamentally, Lewis highlighted the contradiction between control and democracy: “Unless the dominant country should be prepared to concede virtual independence, it ought carefully to avoid encouraging the people of the dependency to advance pretensions which nothing short of independence can satisfy.”<sup>112</sup> Lewis suggested that “a dependency which is likely to remain virtually dependent for a considerable time ought not to be placed under popular institutions of such a character as will probably tempt the people to aim at practical independence . . .”<sup>113</sup> Promises of self-government, Lewis warned, if not genuine, would “sow the seeds of political dissensions, and perhaps of insurrections and wars, which would not otherwise arise.”<sup>114</sup>

Sir George Cornewall Lewis likely represents the deepest reflection on the internal tensions within Victorian British colonial policy. Oxford professor Herman Merivale delivered a series of lectures

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<sup>107</sup> *Id.* at 515.

<sup>108</sup> AN ESSAY ON DEPENDENCIES, *supra* note 98, at 306.

<sup>109</sup> *Id.* at 295–96.

<sup>110</sup> *Id.* at 296–300.

<sup>111</sup> *Id.* at 300.

<sup>112</sup> *Id.* at 314–15.

<sup>113</sup> *Id.* at 320.

<sup>114</sup> *Id.* at 315.

on colonization between 1839 and 1841.<sup>115</sup> Not only did Merivale immediately note Lewis's *Essay*, but he also explicitly shared Lewis's analysis of contradictions.<sup>116</sup> Merivale had the sensitivity to notice the destructive consequences of colonization to indigenous peoples.<sup>117</sup> Nevertheless, like Lewis in his discussion of Indians, Merivale believed that the "subject-people" "are not sufficiently advanced" for a representative assembly.<sup>118</sup> This dichotomy of "two colonies" was embraced, in the early 1860s, by influential minds such as Sir Henry Maine and John Stuart Mill.

Sir Henry Maine, the famous author of *Ancient Law* (1861), declared "the movement of the progressive societies has hitherto been a movement *from Status to Contract*."<sup>119</sup> Maine's claim is based on the fundamental distinction between "stationary" and "progressive societies."<sup>120</sup> Here, Maine was making a claim that can be properly called European exceptionalism: "progressive societies," Maine asserted, were "a rare exception in the history of the world."<sup>121</sup> In fact, Maine believed "the stationary condition of the human race is the rule, the progressive the exception."<sup>122</sup> After seven years of service in the Council in India, Maine talked about British rule in India as being "absolutely foreign to the East":

[T]he Anglo-Indian Government is bound, by the moral conditions of its existence, to apply the modern principle of equality, in all its various forms, to the people of India—equality between religions, equality between races, equality between individuals in the eye of the law. But it has to make this application among a collection of men (a community they can hardly be

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<sup>115</sup> See HERMAN MERIVALE, 2 LECTURES ON COLONIZATION AND COLONIES DELIVERED BEFORE THE UNIVERSITY OF OXFORD IN 1839, 1840, AND 1841 (1842). Merivale was appointed in 1847 as Assistant Under-Secretary for the colonies, and in the next year he became Permanent Under-Secretary. In 1859 he was transferred to the permanent under-secretaryship for India, receiving the distinction of CB.

<sup>116</sup> *Id.* at 287.

<sup>117</sup> *Id.* at 150–82.

<sup>118</sup> *Id.* 116 at 287.

<sup>119</sup> HENRY SUMNER MAINE, *ANCIENT LAW: ITS CONNECTION WITH THE EARLY HISTORY OF SOCIETY, AND ITS RELATION TO MODERN IDEAS* 170 (1861) [hereinafter *ANCIENT LAW*].

<sup>120</sup> *Id.* at 22.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.* at 24.

called) to whom the very idea of equality is unknown or hateful.<sup>123</sup>

Maine's contemporary was John Stuart Mill, who served in the East India Company.<sup>124</sup> During the 1858 debate on the East India Company, he prepared a petition to Parliament, defending the Company's management of colonial affairs in India.<sup>125</sup> In his work, *Considerations on Representative Government* (1861), Mill seemingly continued Adam Smith's question on the cost of colonial policy: "England is sufficient for her own protection without the colonies; and would be in a much stronger, as well as more dignified position, if separated from them . . ." <sup>126</sup> However, Mill divided British dependencies into two classes: "Some are composed of people of similar civilization to the ruling country; capable of, and ripe for, representative government; such as the British possessions in America and Australia. Others, like India, are still at a great distance from that state."<sup>127</sup>

Unlike John Stuart Mill, Sir George Cornewall Lewis was more critical of the East India Company in the 1858 debate. In his capacity as Chancellor of the Exchequer, Lewis spoke critically of the Company in the House of Commons.<sup>128</sup> In 1863, however, Lewis's view was in agreement with to that of John Stuart Mill's.<sup>129</sup> By the early 1860s, the consensus has become the underlying consciousness in British colonial policy circles. In the East, the British Empire tightened its control of British India, via the 1858 Act.<sup>130</sup> In North America, the British North America Act of 1867 relinquished the right to interfere with provincial legislation.<sup>131</sup> Lord Carnarvon, who led the efforts to the 1867 Act in his capacity as Secretary of State for the Colonies, noted in a speech that:

[T]he main principles of local freedom and absolute self-government on which these colonies are to be governed have been settled and accepted on all

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<sup>123</sup> Sir Henry Sumner Maine, *A Mahomedan Revival*, 24 CORNHILL MAGAZINE 421, 437 (1871).

<sup>124</sup> NICHOLAS CAPALDI, JOHN STUART MILL: A BIOGRAPHY 37 (2005).

<sup>125</sup> See generally MEMORANDUM OF THE IMPROVEMENTS IN THE ADMINISTRATION OF INDIA DURING THE LAST THIRTY YEARS (1858); see Douglas M. Peers, *Imperial Epitaph: John Stuart Mill's Defense of the East India Company*, in J.S. MILL'S ENCOUNTER WITH INDIA 198–220 (Martin I. Moir et al. eds. 1999).

<sup>126</sup> JOHN STUART MILL, CONSIDERATIONS ON REPRESENTATIVE GOVERNMENT 325 (1861).

<sup>127</sup> *Id.* at 321.

<sup>128</sup> HC Deb (12 Feb. 1858) (148) cols. 1276–1330 (UK).

<sup>129</sup> See generally SIR GEORGE CORNEWALL LEWIS, A DIALOGUE ON THE BEST FORM OF GOVERNMENT (1863).

<sup>130</sup> Government of India Act 1858, 21 & 22 Vict. c. 106 (UK).

<sup>131</sup> British North America Act 1867, 30 & 31 Vict. c. 3 (UK).

hands . . . [A]s regards all those native races the obligation is laid upon us, and has been accepted by us, of giving them protection, and of gradually raising them in the scale of human knowledge and happiness . . . And *this is the reason why*, in many of these colonies, it is impossible to give ‘self-government’ to the people; for to give self-government in such a case would be to vest the whole authority in the hands of a very small white minority, and to open a chapter of incalculable abuse and misgovernment. Until, in the fulness of time, these uneducated beings are raised to a far higher degree of independence, the Secretary of State must be their protector.<sup>132</sup>

The works of Sir George Cornewall Lewis, Sir Henry Maine, and John Stuart Mill set the foundation for using race as the critical factor for determining colonial representation. This development reconciled Victorian liberalism two fundamental values. By the time Great Britain conquered Hong Kong, and during the years Hong Kong was under British rule, the question of race and representation resurfaced periodically.

## II. HONG KONG IN THE BRITISH EMPIRE

This section examines how the question of representation in Hong Kong’s Legislative Council was raised and addressed. It covers the Legislative Council’s three stages: its formation (Section A), the introduction of its unofficial members (Section B), and the appointments of Chinese unofficial members (Section C). Lord Stanley was reappointed Secretary of State for the Colonies again from 1841 to 1845.<sup>133</sup> Therefore, the basic structure of the first Legislative Council in Hong Kong was supervised and approved by him. Victorian liberalism was well represented in Hong Kong by the governors and their senior colonial officers. Sir Henry Pottinger, Hong Kong’s first Governor, had been a career East India Company colonial officer. Sir John Bowring, the fourth Governor, was a close assistant to Jeremy Bentham, and was responsible for editing and publishing the latter’s works before his appointment to Hong Kong.<sup>134</sup> Their policies and decisions ultimately reflected the internal tensions as well as consensus in Victorian liberalism.

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<sup>132</sup> Lord Carnarvon, *Imperial Administration*, 24 FORTNIGHTLY REV. 751, 753 (1878) (an address at the Philosophical Institution in Edinburgh on Nov. 5, 1878) (emphasis added).

<sup>133</sup> ANGUS HAWKINS, *supra* note 7, ch. 5 (Colonies and Com Laws 1841-1845).

<sup>134</sup> CHARLES MILNER ATKINSON, *supra* note 43, 189–91.

Sections D presents internal communications between Sir William Robinson, governor of Hong Kong, and Lord Ripon in response to an 1894 petition. The dispatches between Hong Kong and London reveal how race was central to their calculation in their final decision not to enlarge the Legislative Council. Section E presents a theory of “two empires” that gained popularity amongst British colonial administrators in the 1890s—the last years of the Queen Victoria’s reign. Both Joseph Chamberlain, Secretary of State for the Colonies, and Sir Henry Arthur Blake, governor of Hong Kong, were proponents of such views. Sections D and E show how the 1860s consensus was put into operation on the ground in Hong Kong.

#### *A. Establishment of the Legislative Council*

As mentioned earlier, Hong Kong was ceded by the Treaty of Nanking, which was signed on August 29, 1842.<sup>135</sup> In Great Britain, the Treaty is known as the “Pottinger Treaty,” after the name of Sir Henry Pottinger, who negotiated the Treaty with China.<sup>136</sup> In May 1841, Pottinger was appointed the British envoy and plenipotentiary in China and superintendent of British trade, replacing Captain Charles Elliot.<sup>137</sup> The instruction from Lord Palmerston—Secretary of State for Foreign Affairs—was for Pottinger to negotiate a treaty with China.<sup>138</sup> Before coming to China, Pottinger had spent more than three decades, from 1803 to 1839, as an East India Company colonial officer.<sup>139</sup> In British India, Pottinger was mentored by Sir John Malcolm,<sup>140</sup> the advocate for indirect rule in British India, and a protégé of Mountstuart Elphinstone,

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<sup>135</sup> Treaty of Nanking, *supra* note 3, at 389.

<sup>136</sup> GEORGE POTTINGER, SIR HENRY POTTINGER: FIRST GOVERNOR OF HONG KONG 91–101 (1997).

<sup>137</sup> JAMES WILLIAM NORTON-KYSHE, 1 THE HISTORY OF THE LAWS AND COURTS OF HONG-KONG 10 (T. Fisher Unwin et al. eds., 1898); GEORGE POTTINGER, *supra* note 136, at 69–70.

<sup>138</sup> In a dispatch dated May 31, 1841, Lord Palmerston specifically instructed: “. . . whatever arrangements you may succeed in making with the Chinese Plenipotentiary, those arrangements must be embodied in a Treaty, to be signed by yourself and by the Chinese Plenipotentiary, in the name of your respective Sovereigns; and to be afterwards ratified by each Sovereign; and you should obtain a formal announcement of the ratification of the Treaty by the Emperor of China, before you can consider a Treaty as valid, and before you send it home for the ratification of Her Majesty.” Extract of a Dispatch from Viscount Palmerston to Sir Henry Pottinger (May 31, 1841), in 35 PARLIAMENTARY PAPERS 607, 617 (1843) [hereinafter Palmerston Instructions (May 31, 1841)].

<sup>139</sup> Pottinger left his home in Ireland for Bombay in 1803, and by the time he took home leave at the end of 1839, he has reached the rank of Resident in Cutch, British India. GEORGE POTTINGER, *supra* note 136, at 7, 41, and 59.

<sup>140</sup> 2 SIR JOHN MALCOLM, THE LIFE AND CORRESPONDENCE OF MAJOR-GENERAL SIR JOHN MALCOLM 42 (John William Kaye ed. 1856).

the Lieutenant-Governor of Bombay from 1819 to 1827.<sup>141</sup> Both Malcolm and Elphinstone were repeatedly quoted by James Mill in his *History of British India* to support the latter's critique of British colonial policy.<sup>142</sup>

Sir Henry Pottinger used the skills he had learned in British India in dealing with China. Hong Kong was officially ceded to Great Britain by the Treaty of Nanking.<sup>143</sup> However, there are doubts whether Home Government in London had sought permanent territory in Hong Kong. Lord Palmerston's instructions in May 1841, mentioned earlier, considered re-occupation of Chusan (*Zhoushan*, near Ningbo city, Zhejiang province), as leverage for the treaty negotiations with China's Emperor.<sup>144</sup> In doing so, Lord Palmerston rejected a proposal by Captain Elliot in March 1841 seeking a "firm and permanent establishment of the depot and of the British authority at Hong-Kong."<sup>145</sup> But that idea stuck to the minds of officials in the East India Company, who were offering military support to the British's operation in China. In a letter to Lord Auckland, Governor General of India, in October 1841, a Secret Committee proposed to occupy islands including Hong Kong, "not temporarily, but for a lengthened period . . ."<sup>146</sup> In December 1841, Lord Stanley wrote to the Board of Control, which supervised the East India Company, that "the only object which Her Majesty desires to obtain" in the current war with China was, after compensation for the damage to British merchants' property, "the establishment of peaceful and friendly commercial relations with China . . ."<sup>147</sup> Lord Stanley specifically clarified that "Her Majesty desires no acquisition of territory . . ."<sup>148</sup>

Nevertheless, Pottinger proceeded with zeal and concluded the Treaty of Nanking. He was rewarded, on April 5, 1843, with the appointment as the first Governor as well as Commander-in-Chief of

<sup>141</sup> GEORGE POTTINGER, *supra* note 136, at 95.

<sup>142</sup> MILL, *supra* note 46, at 177, 360. In 1908, Henry Morris, a retired officer from the Indian Civil Service, compiled a collection of biographies with the title *Heroes of Our Indian Empire*. Morris defined such heroes as "the men who have done most for the welfare and happiness of the Indian people." The list included: Sir Thomas Munro, Sir John Malcolm, the Honorable Mountstuart Elphinstone, Lord Metcalfe, James Thomason, Sir Henry Lawrence, Sir James Outram and Sir Bartle Frere. See 1 HENRY MORRIS, *HEROES OF OUR INDIAN EMPIRE* (1908). On Sir John Malcolm, see JACK HARRINGTON, *SIR JOHN MALCOLM AND THE CREATION OF BRITISH INDIA* (2010).

<sup>143</sup> Treaty of Nanking, *supra* note 3, at 390.

<sup>144</sup> Palmerston Instructions (May 31, 1841), *supra* note 138, at 618.

<sup>145</sup> Copy of a Letter from Captain Elliot to Viscount Palmerston (Mar. 28, 1841), in 35 PARLIAMENTARY PAPERS 611 (1843).

<sup>146</sup> Copy of a Letter from the Secret Committee to the Governor-General of India in Council (Oct. 4, 1841), in 35 PARLIAMENTARY PAPERS 622, 623 (1843).

<sup>147</sup> Extract of a Letter from Lord Stanley to the President of the Board of Control (Dec. 31, 1841), 35 PARLIAMENTARY PAPERS 629 (1843).

<sup>148</sup> *Id.* at 629.

Hong Kong.<sup>149</sup> On the same day, a Royal Charter was granted.<sup>150</sup> It instructed the Governor to constitute a “legislative council” for the colony, to be composed of the Governor and other public officers appointed by the Queen with advice by the Privy Council.<sup>151</sup> On August 22, 1843, an Act was passed by the British Parliament, granting broad legislative and executive powers to the Governor of Hong Kong to “enact, with the advice of the legislative council of the said island of Hong Kong, all such laws and ordinances as may from time to time be required for the peace, order, and good government of her Majesty’s subjects . . .”<sup>152</sup> On August 26, 1843, new Royal Commission and Instructions were issued following the Act.<sup>153</sup> By giving the Governor all the predominant powers of control, and the Legislative Council only a subordinate and advisory role, the governance design resembled that of the East India Company.<sup>154</sup> This clearly contrasted with representative institutions in Australia, Canada, and Newfoundland.<sup>155</sup>

In October 1843, the Colonial Office under Lord Stanley issued a new set of “Rules and Regulations for Her Majesty’s Colonial Service.”<sup>156</sup> The new rules prescribed the Legislative Council as created “in the exercise of the unaided prerogative of the Crown.”<sup>157</sup> It confirmed that in Crown Colonies the Legislative Council was an advisory body only.<sup>158</sup> To distinguish the two colonial categories—Crown Colonies and

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<sup>149</sup> *Royal Commission Appointing the Governor of Hongkong*, 12 THE CHINESE REPOSITORY 379, 379 (1843).

<sup>150</sup> *Royal Charter of Hong Kong*, *supra* note 4, at 380.

<sup>151</sup> *Id.*

<sup>152</sup> British Subjects in China Act 1843, 6 & 7 Vict. c. 80 (UK), Article II. The legislative power under Article II of the Act was extended beyond the territory of Hong Kong itself by covering all “her Majesty’s subjects being within the dominions of the Emperor of China, or being within any ship or vessel at a distance of not more than one hundred miles from the coast of China, and to enforce the execution of such laws and ordinances by such penalties and forfeitures as to him, by the advice aforesaid, shall seem fit . . .” During the deliberation at the House of Lords, this was debated but passed without modification. HL Deb (7 Aug. 1843) (71) cols. 316–17 (UK).

<sup>153</sup> British Commission, authorizing the Superintendent of the Trade in China, to enact Laws and Ordinances for the Government of British Subjects.—Windsor Castle, August 26, 1843, and British Instructions to the Chief Superintendent of Trade in China, relative to the Government of British Subjects.—Windsor Castle, 26 Aug., 1843, 31 BSP 1233 (1858).

<sup>154</sup> For Article 43 of the India Government Act granted similar legislative power to the Governor General in Council, see Government of India Act 1833, 3 & 4 Will. 4 c. 85 (UK).

<sup>155</sup> British North America Act 1840, 3 & 4 Vict. c. 35; South Australia Act 1842, 5 & 6 Vict. c. 61; Australian Constitutions Act 1842, 5 & 6 Vict. c. 76; Newfoundland Act 1842, 5 & 6 Vict. c.120.

<sup>156</sup> *See generally* COLONIAL OFFICE, RULES AND REGULATIONS FOR HER MAJESTY’S COLONIAL SERVICE (W. Clowes and Sons, 1843).

<sup>157</sup> *Id.* at 9.

<sup>158</sup> *Id.*



colonies with representative institutions—the new Rules and Regulations assigned different titles to local laws: in colonies possessing representative assemblies, laws are designated as “acts,” whereas in colonies without legislative assemblies, laws are designated as “ordinances.”<sup>159</sup> An example is Natal (South Africa), which became a colony in May 1844,<sup>160</sup> and was authorized to set up a Legislative Council in March 1847,<sup>161</sup> with all its members appointed by the Crown. In Hong Kong, the initial Legislative Council did not have its first meeting until January 11, 1844.<sup>162</sup> A number of Pottinger’s government officers had served in the East India Company before coming to Hong Kong, leaving *The Spectator* to remark that “[t]he local authority [in Hong Kong] has been vested in officials of the Indian school.”<sup>163</sup>

Ironically, Sir Henry Pottinger built a governance structure contrary to growing demand for representative government in other British colonies. This development occurred under Lord Stanley’s watch, who maintained a strong view in keeping Crown Colonies the way they were.

### B. Unofficial Members

During the 1850s, “unofficial” members began to join the Legislative Council. Under Governor Sir John Francis Davis (1795–1890), who ruled the colony from 1844 to 1848,<sup>164</sup> the Legislative Council only consisted of officials appointed by the Crown: the Governor, the Lieutenant-Governor, the Chief Justice of the Supreme Court, and the Attorney General.<sup>165</sup> However, demands for reforming the Legislative Council were made during the October 1844 agitation against establishing a registry of all inhabitants in Hong Kong. James William Norton-Kyshe recorded the sentiment: “It was not considered possible that . . . the Legislative Council would continue long composed as it was. Though a popular elective Legislature was out of the question, an

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<sup>159</sup> *Id.* at 14.

<sup>160</sup> Letters Patent, May 31, 1844, reproduced in 2 NATAL ORDINANCES, LAWS, AND PROCLAMATIONS 1475–76 (Charles Fitzwilliam Cadiz ed. 1891).

<sup>161</sup> Letters Patent, Mar. 2, 1847, reproduced in 2 NATAL ORDINANCES, LAWS, AND PROCLAMATIONS 1480–81 (Charles Fitzwilliam Cadiz ed. 1891).

<sup>162</sup> JAMES WILLIAM NORTON-KYSHE, *supra* note 137, at 33; E. J. EITEL, EUROPE IN CHINA: THE HISTORY OF HONGKONG FROM THE BEGINNING TO THE YEAR 1882 195 (Ch Eng-Wen, 1895) [hereinafter EUROPE IN CHINA].

<sup>163</sup> *British China*, THE SPECTATOR, Oct. 18, 1845, at 996.

<sup>164</sup> Sir John Francis Davis was appointed on February 9, 1844, “Commission of Legislative Powers, under the Great Seal, dated 9th February 1844,” and a Letters Patent was issued on February 23, 1844, Governor’s Commission, dated 23rd February 1844, *Letters Patent under the Great Seal*, 13 THE CHINESE REPOSITORY 268 (1844). Davis was an accomplished scholar on China.

<sup>165</sup> EUROPE IN CHINA, *supra* note 162, at 221.

assembly having some control over the Executive was considered necessary.”<sup>166</sup> In July 1845, during the agitation against Ordinance No.2 of 1845, which raised an assessed rate on lands in order to maintain a police force, the issue came up again: “It was admitted to be unreasonable to ask for an elective Council, but it was urged that the inhabitants were entitled to representation, so far as it could be obtained by the nomination of representatives by the Crown.”<sup>167</sup> Governor Davis rejected all demands for representation.<sup>168</sup> His successor, Sir George Bonham, decided differently.

*1. Sir George Bonham.* — The first unofficial members of the Legislative Council were appointed in 1850, under Sir George Bonham, the third Governor of Hong Kong from 1848 to 1854.<sup>169</sup> Before coming to Hong Kong, Bonham had served as governor of the Straits Settlements (Singapore, Penang, and Malacca) from 1836 to 1842, and Prince of Wales Island from 1833 to 1836.<sup>170</sup> He was appointed in November 1847 as Her Majesty’s Plenipotentiary and Chief Superintendent of Trade in China,<sup>171</sup> and subsequently as Governor of Hong Kong to succeed John Davis. In January 1849, a group of Hong Kong mercantile firms submitted a petition to the British House of Commons demanding, among other things, popular representation in the Legislative Council.<sup>172</sup> Paragraph 8 of the petition stated: “Your petitioners further represent that although this colony has been established for upwards of seven years, the inhabitants have no share in the Legislature either by elective representation or by nominees selected by the Governor, a privilege which has not been withheld from any other British Colony.”<sup>173</sup>

At the time, among the Crown Colonies, Ceylon (Sri Lanka) was the only one that had unofficial members in the Legislative Council,

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<sup>166</sup> JAMES WILLIAM NORTON-KYSHE, *supra* note 137, at 80; EUROPE IN CHINA, *supra* note 162, at 195.

<sup>167</sup> JAMES WILLIAM NORTON-KYSHE, *supra* note 137, at 80; EUROPE IN CHINA, *supra* note 162, at 195.

<sup>168</sup> EUROPE IN CHINA, *supra* note 162, at 221.

<sup>169</sup> *Id.* at 253–87.

<sup>170</sup> G. B. ENDACOTT, A BIOGRAPHICAL SKETCH-BOOK OF EARLY HONG KONG 30–35 (2005) (“Sir Samuel George Bonham”). THOMAS JOHN NEWBOLD, 1 POLITICAL AND STATISTICAL ACCOUNT OF THE BRITISH SETTLEMENTS IN THE STRAITS OF MALACCA VIZ. PINANG, MALACCA, AND SINGAPORE, WITH A HISTORY OF THE MALAYAN STATES ON THE PENINSULA OF MALACCA 7 (1839).

<sup>171</sup> British Commission, November 27, 1847, signed by Viscount Palmerston, in 8 A COMPLETE COLLECTION OF THE TREATIES AND CONVENTIONS AND RECIPROCAL REGULATIONS AT PRESENT SUBSISTING BETWEEN GREAT BRITAIN AND FOREIGN POWERS, AND OF THE LAWS, DECREES AND ORDERS IN COUNCIL CONCERNING THE SAME 120 (Lewis Hertslet ed. 1851).

<sup>172</sup> JAMES WILLIAM NORTON-KYSHE, *supra* note 137, at 217–24; EUROPE IN CHINA, *supra* note 162, at 261.

<sup>173</sup> JAMES WILLIAM NORTON-KYSHE, *supra* note 137, at 222–23.

which was authorized in March 1833.<sup>174</sup> Royal Instructions issued in August 1833 recognized unofficial members in the Legislative Council: “of [the fifteen,] nine shall at all times be persons holding office within the said Island at Our pleasure, and the remaining six shall at all times be persons not holding any such office.”<sup>175</sup> Appointments of the six unofficial members were made in 1835, among them were three natives—one Singhalese, one Tamil and one Burgher.<sup>176</sup> The unofficial members were not elected, but rather nominated by the Governor and approved by the Secretary of State for the Colonies.<sup>177</sup> In May 1848, Lord Grey, Secretary of State for the Colonies, was conscious of Ceylon as “a colony of which the legislature does not possess a representative character,” therefore he refused to consider reform proposals to expand the Legislative Council.<sup>178</sup>

In February 1849, Governor Bonham sent a dispatch to Lord Grey regarding the January petition. Bonham carefully proposed adding two members from the business community to the Legislative Council:

The admission of two gentlemen of the Commercial Body would prove extremely useful in many respects for they process, from a more free and constant intercourse among themselves and with the native inhabitants than the Government officers conveniently can have, the means of acquiring information of the requirements of the Colony and of the changes and amendments to be desired which from their position is

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<sup>174</sup> Letters Patent, dated March 19, 1833, passed under the Great Seal of the United Kingdom, Providing for the Establishment of a Legislative Council and an Executive Council for the Island of Ceylon, reproduced in 1 STATUTORY RULES AND ORDERS REVISED (1904).

<sup>175</sup> A Copy of the Supplementary Commission, and Additional Instructions under the Royal Sign Manual, for the Island of Ceylon, referred to in the Dispatch from Viscount Goderich, of the 23d March 1833, to the Right Honorable Sir R. J. Wilmot Horton, dated Aug. 19, 1833, reproduced in 26 PARLIAMENTARY PAPERS 389 (1833) [hereinafter Additional Instructions].

<sup>176</sup> WILLIAM DIGBY, FORTY YEARS OF OFFICIAL AND UNOFFICIAL LIFE IN AN ORIENTAL CROWN COLONY, BEING THE LIFE OF SIR RICHARD F. MORGAN 95 (1879).

<sup>177</sup> For example, the appointment of George Ackland, a merchant who was nominated by Governor Viscount Torrington in his dispatch to Lord Grey on June 9, 1847, and then approved by Lord Grey on September 18, 1847, reproduced in 20 PARLIAMENTARY SESSIONAL PAPERS (House of Lords) 380–81 (1851).

<sup>178</sup> Dispatch from Lord Grey to Governor Viscount Torrington, May 18, 1848, reproduced in 20 PARLIAMENTARY SESSIONAL PAPERS (House of Lords) 378–79 (1851).

denied to the members of the Council as at present constituted.<sup>179</sup>

In November 1849, Governor Bonham announced that he had received a dispatch from Earl Grey approving his proposal for admitting two members from the British merchant community into the Legislative Council.<sup>180</sup> After consulting the Justice of the Peace, the Governor chose David Jardine and Joseph Frost Edger and submitted them to Earl Grey in December.<sup>181</sup> In his dispatch to Lord Grey, the Governor was careful to explain that the former being “the principal resident partner of the influential and wealthy firm of Jardine Matherson, and the latter is the representative of the equally respectable firm Jamieson Edger & Co.”<sup>182</sup>

The reasoning behind Governor Bonham’s choice to not recommend any Chinese individuals as unofficial members is obvious. One reason would be the risk of rejection by the Colonial Office at home. In 1849, discussions about race were happening in London. In a debate at the House of Commons in April 1849,<sup>183</sup> on the issue of colonial administration, Benjamin Hawes, a Whig member in the House of Commons and Under Secretary for the Colonies, was stating: “With regard to conferring local self-government on the colonies, no one would go further than Lord Grey.”<sup>184</sup> But Hawes stressed that “one limitation to the application of self-government—namely, where there is a dominant class, and a subject or different race.”<sup>185</sup> Lord Grey himself, who did have a record of liberal policies, stated in a book published in 1852: “the policy has been adopted of giving a very large measure indeed of self-government to those Colonies of which the population is of European race, and capable, from its progress in civilization, of exercising the privilege with advantage.”<sup>186</sup> The statement of Lord Grey, as Secretary of State for the Colonies who oversaw all British colonies, suggests a clear continuity with that of Lord Stanley.

2. *Sir John Bowring*. — More unofficial members were added to the Legislative Council in Hong Kong under Sir John Bowring (1792–1872), the fourth Governor from 1854 to 1859. Before his appointment

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<sup>179</sup> Governor Bonham to Lord Grey, Feb. 26, 1849, dispatch 22, CO 129/28, reproduced in *GOVERNMENT AND POLITICS: A DOCUMENTARY HISTORY OF HONG KONG* 59–60 (Steve Tsang ed., 1995).

<sup>180</sup> JAMES WILLIAM NORTON-KYSHE, *supra* note 137, at 260–61.

<sup>181</sup> Governor Sir George Bonham to Earl Grey, Dec. 15 1849, dispatch 112, CO 129/30, reproduced in *GOVERNMENT AND POLITICS: A DOCUMENTARY HISTORY OF HONG KONG* 196 (Steve Tsang ed., 1995).

<sup>182</sup> *Id.*

<sup>183</sup> HC Deb (26 Apr. 1849) (104) cols. 314–76.

<sup>184</sup> *Id.* col. 345.

<sup>185</sup> *Id.*

<sup>186</sup> EARL GREY, *COLONIAL POLICY, AND THE STATE OF OUR COLONIES* 5 (1852).

to Hong Kong, Bowring had been an associate to Jeremy Bentham as co-editor of the *Westminster Review*, a journal Bentham created for philosophical radicals.<sup>187</sup> In 1832, when Bentham died, Bowring became the former's literary executor, charged with the task of editing and collecting Bentham's works.<sup>188</sup> So it is only natural to expect that Bowring would push for certain reform in the colony of Hong Kong.

In August 1855, Governor Bowring wrote to Lord John Russell about reforming the Legislative Council, where it was proposed to add six new members, three official and three unofficial.<sup>189</sup> In making the proposal, Bowring noted that "Her Majesty's Government [has] decided that the non-official members now belonging to the Legislative Council should be chosen from the bench of magistrates."<sup>190</sup> However, Bowring offered his rationale: "But I hold it of paramount importance, for the satisfaction of the community, and for the interests of good government, that the five non-official members should not be selected from persons holding office in the colony."<sup>191</sup>

Even Bowring had his doubts. In his *Autobiographical Recollections*, he wrote: "On my recommendation, the Legislative Council had an infusion of many non-official names, but I am not sure that the colony was ripe for this sort of representation, and I think that more might have been done by the executive without the popular element."<sup>192</sup> Parliament members expressed concerns too. Henry Labouchere (1798-1869, later Lord Taunton), a prominent Whig liberal who later served as Secretary of State for the Colonies from November 1855 until 1858, discussed his views on the "electoral body":

[B]ut before any decision can be arrived at upon it, it is essential that Her Majesty's Government should be furnished with more detailed information on the most essential feature of the plan. They must have some knowledge of the future electoral body . . . They

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<sup>187</sup> CHARLES MILNER ATKINSON, *supra* note 43, 189–91.

<sup>188</sup> G. F. Bartle, *Jeremy Bentham and John Bowring: A Study of the Relationship between Bentham and the Editor of His Collected Works*, 36 BULLETIN OF THE INSTITUTE OF HISTORICAL RESEARCH 27 (1963); *see also* SIR JOHN BOWRING, 1792–1872: ASPECTS OF HIS LIFE AND CAREER (Joyce Alice Youngs ed., Devonshire Ass'n 1993); PHILIP BOWRING, FREE TRADE'S FIRST MISSIONARY: SIR JOHN BOWRING IN EUROPE AND ASIA (2014); David Todd, *John Bowring and the Global Dissemination of Free Trade*, 51 (2) HIST. J. 373, 374 (2008).

<sup>189</sup> Copy of Dispatch from Governor Sir J. Bowring to the Right Honorable Lord John Russell, M.P. (Aug. 2, 1855), in 43 PARLIAMENTARY PAPERS 210 (1857).

<sup>190</sup> *Id.*

<sup>191</sup> *Id.*

<sup>192</sup> SIR JOHN BOWRING, AUTOBIOGRAPHICAL RECOLLECTIONS OF SIR JOHN BOWRING 218–19 (Cornell University Library 1919) (1877).

should be enabled to form an estimate of the probable number of such electors; the proportion they may bear to the unrepresentative classes of the population; whether they would be chiefly European, and with what admixture of Chinese islanders or recent settlers, and such other particulars as you may be able to communicate.<sup>193</sup>

Labouchere was not convinced and eventually disapproved the proposal. In his letter to the Governor in July 1856, Labouchere informed him that “I have decided against the proposal which you have made, to introduce the representative element into the Government of Hong Kong.”<sup>194</sup> Labouchere noted that Bowring’s proposal was “the first proposal that has been made for introducing those institutions amongst an Asiatic population . . . .”<sup>195</sup> He explained plainly that he was concerned about race: “The testimony of those best acquainted with them, represent the Chinese race as endowed with much intelligence, but as very deficient in the most essential element of morality. The Chinese population of Hong Kong is, with perhaps a few honorable exceptions, admitted to stand very low in this respect.”<sup>196</sup> Labouchere even mentioned: “The information which I have received from you does not lead me to suppose that education has made such progress among the youthful population as to give promise that the next generation will be much superior to the present in moral culture.”<sup>197</sup>

Labouchere was not alone in his opposition. A member of John Bowring’s own staff, William Thomas Mercer, agreed. In a memorandum to Labouchere dated March 6, 1856, Mercer explained that his position was different from Bowring’s:

I wish to observe, that although long desirous to see both Councils enlarged, I never recognized the expediency of admitting into them what may be familiar termed ‘the popular element,’ to the extent contemplated by the plan under discussion; and in drawing out that plan originally, I regarded myself as

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<sup>193</sup> The Right Hon. H. Labouchere, Copy of Dispatch from the Right Honorable H. Labouchere, M.P., to Governor Sir J. Bowring, (Nov. 23, 1855), in 43 PARLIAMENTARY PAPERS 212 (1857).

<sup>194</sup> The Right Hon. H. Labouchere, Copy of Dispatch from the Right Honorable H. Labouchere, M.P., to Governor Sir J. Bowring, (July 29, 1856), in 43 PARLIAMENTARY PAPERS 219 (1857).

<sup>195</sup> *Id.*

<sup>196</sup> *Id.*

<sup>197</sup> *Id.*

acting under his Excellency's instructions and carrying out his views.<sup>198</sup>

Mercer's memorandum reveals that the racial prejudice against local Chinese population in Hong Kong was shared by many of the senior colonial officers in Hong Kong.

### *C. The Chinese Unofficial Members*

The 1880s witnessed the first unofficial Chinese members to the Legislative Council, almost half a century later than Ceylon. Mr. Wu Tingfang (伍廷芳 1842-1922), *a.k.a.* Ng Choy, was made the first Chinese unofficial member by Governor Sir John Pope Hennessy in January 1880,<sup>199</sup> which was approved by the Queen in June 1880.<sup>200</sup> Governor Hennessy's personal background distinguished himself from other colonial administrators of the British Empire: as an Irish, Catholic, reform-minded representative of the Crown, he had special sensibility and connection with the natives.<sup>201</sup> In Hong Kong, Governor Hennessy clashed with British merchants when he opened the City Hall building to the Chinese residents.<sup>202</sup> He clashed with them again when he appointed Ng Choy as the first unofficial member of the Legislative Council.<sup>203</sup>

The second Chinese unofficial member to the Legislative Council was Wong Shing (黃勝 1827-1902), appointed in 1884 by Sir George Ferguson Bowen, the Ninth Governor of Hong Kong, from 1883 to 1887. Before coming to Hong Kong, Bowen had served as governor of the Ionian Islands, Queensland, New Zealand, Victoria, and Mauritius.<sup>204</sup> He proposed to add unofficial members to the Legislative Council in 1883. In his dispatch to Lord Derby, on May 14, 1883,<sup>205</sup> Sir

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<sup>198</sup> W. T. Mercer, Memorandum on the Re-construction of the Councils of the Colony, (Mar. 6, 1856), Enclosure No.1 in *Copy of Dispatch from Governor Sir J. Bowring to the Right Honorable H. Labouchere, M.P.*, (Mar. 26, 1856), in 43 PARLIAMENTARY PAPERS 213 (1857).

<sup>199</sup> Government Notification, No. 14, (1880) 26 HONG KONG GOVERNMENT GAZETTE No. 3.

<sup>200</sup> Government Notification, No. 130, (1880) 26 HONG KONG GOVERNMENT GAZETTE No. 24; *See also* EUROPE IN CHINA, *supra* note 162, at 530; T. C. Cheng, *Chinese Unofficial Members of the Legislative and Executive Councils in Hong Kong up to 1941*, 9 J. H.K. BRANCH ROYAL ASIATIC SOC'Y 7, 7-30 (1969).

<sup>201</sup> Kate Lowe & Eugene McLaughlin, *Sir John Pope Hennessy and the 'Native Race Craze': Colonial Government in Hong Kong, 1877-1882*, 20 J. IMPERIAL & COMMONWEALTH HIST. 223, 223 (1992).

<sup>202</sup> *Id.* at 234.

<sup>203</sup> *Id.* at 239.

<sup>204</sup> GEORGE BOWEN, 1 THIRTY YEARS OF COLONIAL GOVERNMENT 12 (Stanley Lane-Poole ed. 1889).

<sup>205</sup> George Bowen, Dispatch to the Earl of Derby, (May 14, 1883), in 2 THIRTY YEARS OF COLONIAL GOVERNMENT 254 (Stanley Lane-Poole ed. 1889).

George Bowen proposed that three new members be added to the official body and “at least two new members should also be added to the unofficial element in the Legislature.”<sup>206</sup> Bowen was also conscious of the unofficial members racial composition: “One more should certainly be a member of the Chinese community, as representatives of the native communities have for many years past held seats in the Legislatures of British India, Ceylon, New Zealand, and the Straits Settlements.”<sup>207</sup> In August 1883, Lord Derby agreed with only one addition to the unofficial member of the Legislative Council and endorsed the idea that “one at least of [them] shall be a member of the Chinese community.”<sup>208</sup> Bowen consulted the Chinese community, and found Wong Shing widely recognized, so he made the appointment in 1884.<sup>209</sup>

In July 1884, Bowen wrote to Lord Derby and informed him that, “[t]he reconstruction of the Colonial Legislature of Hong Kong has proved a complete success, and has fully justified my efforts to procure the consent of the Imperial Government to an enlargement of the unofficial element in the Council, with the view of securing a more adequate representation of the opinions and feelings of the entire community.”<sup>210</sup> He referred particularly to Wong Shing: “[a] Chinese gentleman of worth, capacity, and position represents the resident Chinese population.”<sup>211</sup> Earlier in 1884, in a speech at the Legislative Council, Bowen said, “I am confident that the Government will derive valuable aid from the local knowledge and experience of the unofficial members . . .”<sup>212</sup> Bowen, who was not a radical reformer, believed that “most of the advantages of representative government were obtained without the evils and risks of popular elections in a community where the resident English do not exceed one thousand in a total population of 200,000.”<sup>213</sup>

The third Chinese unofficial member was Dr. Ho Kai (何啟 1859–1914), who was appointed in 1890 by Governor Sir George

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<sup>206</sup> *Id.* at 261.

<sup>207</sup> *Id.* at 262.

<sup>208</sup> The Earl of Derby, Dispatch to Governor Sir G. F. Bowen (Aug. 7, 1883), in *THIRTY YEARS OF COLONIAL GOVERNMENT* 266, 268 (Stanley Lane-Poole ed. 1889).

<sup>209</sup> BOWEN, *supra* note 204, at 12.

<sup>210</sup> G. F. Bowen, Dispatch to the Right Hon. the Earl of Derby (July 16, 1884), in *PAPERS RELATING TO HER MAJESTY'S COLONIAL POSSESSIONS, REPORTS FOR 1881, 1882, 1883, 254 (1884) [hereinafter PARLIAMENTARY PAPERS]*.

<sup>211</sup> *Id.* at 255.

<sup>212</sup> G.F. Bowen, Speech of His Excellency the Governor at the Opening of the Session for 1884 of the Legislative Council of Hong Kong, in *PARLIAMENTARY PAPERS* 255 (1884).

<sup>213</sup> BOWEN, *supra* note 204, at 253.



William Des Vœux,<sup>214</sup> the Tenth Governor of Hong Kong. Dr. Ho Kai, brother-in-law to Ng Choy, was born in Hong Kong and studied medicine and law in England.<sup>215</sup> Shortly after his return, he was appointed a Justice of the Peace in 1882, and a member of the Sanitary Board in 1886. Dr. Ho Kai attended the first Legislative Council meeting on March 5, 1890,<sup>216</sup> and served on it up to 1914.

#### *D. Race and Representation in Hong Kong*

In 1894, Thomas Henderson Whitehead, one of the two unofficial members of the Legislative Council, led a petition to the British Parliament demanding better representation in the government.<sup>217</sup> Whitehead was a Scottish banker at the Chartered Bank in Hong Kong and was appointed by Sir George William Des Vœux to the Legislative Council in 1890 as an unofficial member.<sup>218</sup> The 1894 petition, which was endorsed by 363 merchants in Hong Kong, complained about the colony's administration and demanded for an "effective voice in the management of its affairs, external or internal."<sup>219</sup> The petition referenced "more liberal forms of Government" in other British colonies such as Malta, Cyprus, Mauritius, British Honduras, and demanded that the petitioners be granted "the same or similar privileges."<sup>220</sup> In bringing home the notion of English liberty, the petition emphasized that "[a]ll your Petitioners claim is the common right of Englishmen to manage their local affairs and control the Expenditure of the Colony, where Imperial considerations are not involved."<sup>221</sup> In its conclusion, the petition demanded that the petitioners "ought to be allowed the free

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<sup>214</sup> Government Notification, No. 82 (1890), 36 HONG KONG GOVERNMENT GAZETTE No. 10. GEORGE WILLIAM DES VOEUX, 2 MY COLONIAL SERVICE 282 (1903).

<sup>215</sup> See generally G. H. CHOA, *THE LIFE AND TIMES OF SIR KAI HO KAI: A PROMINENT FIGURE IN NINETEENTH-CENTURY HONG KONG* (2d ed. 2000); T. C. Cheng, *supra* note 200, at 12–16; JOHN M. CARROLL, *EDGE OF EMPIRES: CHINESE ELITES AND BRITISH COLONIALS IN HONG KONG* (2005).

<sup>216</sup> *Legislative Council, No. 4* (1890), 36 HONG KONG GOVERNMENT GAZETTE 1.

<sup>217</sup> The petition and related papers are collected in Papers on the Subject of a Petition Addressed to the House of Commons Praying for an Amendment of the Constitution of the Crown Colony of Hongkong, in *SESSIONAL PAPERS LAID BEFORE THE LEGISLATIVE COUNCIL OF HONGKONG*, 423–48 (No. 26) (1896) [hereinafter 1894 PETITION PAPERS]. For comments on the petition of 1894, see G. B. ENDACOTT, *GOVERNMENT AND PEOPLE IN HONG KONG, 1841–1962: A CONSTITUTIONAL HISTORY* 120 (1964); *Constitution and Law*, in *TWENTIETH CENTURY IMPRESSIONS OF HONGKONG, SHANGHAI AND OTHER TREATY PORTS OF CHINA* 100 (Arnold Wright ed. 1908).

<sup>218</sup> *Government Notification, No. 531*, H.K. GOV'T GAZETTE 1266 (1890) (approval from the Queen of Whitehead's appointment as unofficial member of the Hong Kong Legislative Council).

<sup>219</sup> 1894 PETITION PAPERS, *supra* note 217, at 425.

<sup>220</sup> *Id.* at 426.

<sup>221</sup> *Id.* at 427.

election of Representatives of British Nationality in the Legislative Council of the Colony; a majority in the Council of such elected Representatives . . . .”<sup>222</sup>

In May 1894, Whitehead left for England. The petition was presented to the House of Commons in March 1895.<sup>223</sup> Shortly after Whitehead’s departure from Hong Kong, on June 5, 1894, Sir William Robinson, Governor of Hong Kong, sent a dispatch to Lord Ripon,<sup>224</sup> the Secretary of State for Colonies. The Governor enclosed a copy of the petition, a memorandum prepared by his acting Colonial Secretary, J. H. Stewart Lockhart,<sup>225</sup> as well as a letter from J. J. Keswick, and one from E. R. Belilios, both unofficial members of the Legislative Council. The Governor’s letter explained that “[t]hese papers will be of material assistance in enabling your Lordship to arrive at a decision upon the subject.”<sup>226</sup> Robinson indicated that “I concur generally in the criticisms of Mr. Stewart Lockhart.”<sup>227</sup>

Lockhart (1858–1937), a Scottish, was a career colonial officer who had served in Hong Kong since 1879.<sup>228</sup> He was appointed as the Colonial Secretary in 1895.<sup>229</sup> As a scholar on Chinese culture, he was familiar with China and Hong Kong; as an colonial administrator, he “saw obvious advantages in securing Chinese support for government policies.”<sup>230</sup> Lockhart’s memo started by pointing out who the petitioners were: “The signatories amount to 363: of these 284 are British, 10 Anglo-Chinese, 3 Americans, 4 Portuguese, and 47 British Indians.”<sup>231</sup> The memo continued to argue that not only was the vast majority of Hong Kong’s population Chinese, but also that Chinese persons were contributing to the economy, as “the modern tendency is for the trade to fall more and more into the hands of the Chinese, though

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<sup>222</sup> *Id.*

<sup>223</sup> THOMAS HENDERSON WHITEHEAD, *HOW A CROWN COLONY IS GOVERNED* 2 (1896). On February 12, 1895, while in London, Whitehead read a paper at the Royal Colonial Institute. Thomas Henderson Whitehead, *The Critical Position of British Trade with Oriental Countries*, 4 J. OF THE ROYAL COLONIAL INST. 225, 225 (1895).

<sup>224</sup> Dispatch from the Governor to the Secretary of State (June 5, 1894), in 1894 PETITION PAPERS, *supra* note 217, at 423–24.

<sup>225</sup> Memorandum by the Acting Colonial Secretary (The Honorable J. H. Stewart Lockhart), dated May 26, 1894, in 1894 PETITION PAPERS, *supra* note 217, at 427–34 [hereinafter *Lockhart Memo*].

<sup>226</sup> Dispatch from the Governor to the Secretary of State (June 5, 1894), *supra* note 224, at 423.

<sup>227</sup> *Id.* at 423.

<sup>228</sup> Henry James Lethbridge, *Sir James Haldane Stewart Lockhart: Colonial Civil Servant and Scholar*, 12 J. OF THE H.K. BRANCH OF THE ROYAL ASIATIC SOC’Y 55, 55–88 (1972).

<sup>229</sup> *Id.* at 58.

<sup>230</sup> *Id.*

<sup>231</sup> *Lockhart Memo*, *supra* note 225, at 427.

this could hardly be attributed to ‘self-sacrifice’ on the part of the petitioners.”<sup>232</sup> As a consequence, “[m]ost of the taxes fall almost entirely on Chinese.”<sup>233</sup> Therefore, the memo inferred, “residents of British nationality are at present over-represented in the Legislative Council.”<sup>234</sup> By contrast, “[o]f the five Unofficial Members two are natives of Great Britain, two are natives of India, and one is a native of Hongkong. The Chinese properly so called are not represented at all . . . .”<sup>235</sup>

But the memo did not proceed to advocate for Chinese representation in the Legislative Council. Rather, it warned that “if the right of election is to include aliens, Chinese numbers would swamp those of any other nationality; the Council would be constituted entirely as the Chinese might desire, and it would be quite possible for them to elect none but Anglo-Chinese Members.”<sup>236</sup> There was no need to worry about this possibility, the memo implied, because “representative institutions are not only unsuitable but quite alien to the mind of the Chinese.”<sup>237</sup>

In Lord Ripon’s letter to Governor Robinson on August 23, 1894,<sup>238</sup> he considered Lockhart’s memo “excellent,”<sup>239</sup> and largely incorporated it in his own analysis of the issue. Lord Ripon came to the same conclusion: “the petitioners ask nominally that Hongkong should be given self-government, and an elective system. In my opinion the place and its circumstances are wholly unsuited for what is proposed.”<sup>240</sup> Like Lord Stanley, Lord Ripon considered representative institutions dominated by the local British merchants a threat to the broader interests of the British Empire, including those of local inhabitants:

I consider that the well-being of the large majority of the inhabitants is more likely to be safeguarded by the Crown Colony system, under which, as far as possible no distinction is made of rank or race, than by representation which would leave the bulk of the population wholly unrepresented.<sup>241</sup>

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<sup>232</sup> *Id.* at 430.

<sup>233</sup> *Id.* at 431.

<sup>234</sup> *Id.*

<sup>235</sup> *Id.*

<sup>236</sup> *Id.*

<sup>237</sup> *Id.* at 429.

<sup>238</sup> Dispatch from the Secretary of State to the Governor (Aug. 23, 1894), in 1894 PETITION PAPERS, *supra* note 217, at 442–47.

<sup>239</sup> *Id.* at 443.

<sup>240</sup> *Id.* at 445.

<sup>241</sup> *Id.* at 445.

He attributes the success and prosperity of Hong Kong in part to Imperial protection and policy.<sup>242</sup> Lord Ripon thus told Governor Robinson that:

I'm not inclined to add to the number of the Unofficial Members without at the same time increasing also the number of Official Members, for in a Crown Colony there must be a very distinct preponderance on the Official side, and that the natural result of evenly balancing the numbers of Officials and Unofficials is friction and irritation.<sup>243</sup>

On July 1, 1895, Joseph Chamberlain succeeded Lord Ripon as the new Secretary of State for the Colonies.<sup>244</sup> Chamberlain sent a dispatch on May 29, 1896,<sup>245</sup> confirming Lord Ripon's position: "In his dispatch . . . Lord Ripon stated that he could hold out no hope that Hongkong will cease to be a Crown Colony. Neither can I hold out any such hope . . ."<sup>246</sup> It was only for a practical reason that Chamberlain was willing to consider adding one unofficial member to the Legislative Council. Chamberlain recommended Governor Robinson to add one official member to the Legislative Council—the military officer who commands the troops in Hong Kong—who can administer the government in the absence of the Governor. "[I]f he is added to it," Chamberlain wrote in the letter, "I am willing to add one unofficial member to the unofficial bench."<sup>247</sup> Chamberlain indicates that he would leave the Governor to determine who should fill that position, but he hinted that a Chinese unofficial member would be proper: ". . . the Chinese community is the element which is least represented . . . , and that I should regard as valuable any step which tended to attach them more closely to the British connection, and to increase their practical interest in public affairs."<sup>248</sup> The letter was followed by Additional Instructions from Queen Victoria on July 7, 1896,<sup>249</sup> specifically on the Legislative Council. Shortly afterwards, Governor Robinson appointed Wei Yuk (韋玉, 1849-1921) as a new unofficial member to the Legislative Council. Wei Yuk,<sup>250</sup> aka Wei Bo-shan, was Mr. Wong Shing's son-in-law. Like his contemporary

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<sup>242</sup> *Id.* at 443-44.

<sup>243</sup> *Id.* at 446.

<sup>244</sup> TRAVIS L. CROSBY, JOSEPH CHAMBERLAIN: A MOST RADICAL IMPERIALIST (2011), Chapter 10 ("Power Gained: the Colonial Office").

<sup>245</sup> Dispatch from the Secretary of State to the Governor (May 29, 1896), in 1894 PETITION PAPERS, *supra* note 217, at 447-48.

<sup>246</sup> *Id.* at 447.

<sup>247</sup> *Id.* at 448.

<sup>248</sup> *Id.*

<sup>249</sup> *Government Notification, No.313*, H.K. GOV'T GAZETTE 809-10 (1896).

<sup>250</sup> T. C. Cheng, *supra* note 200, at 16.

Dr. Ho Kai, Wei was born in Hong Kong and studied in England.<sup>251</sup> He returned to Hong Kong in 1872, and was appointed Justice of the Peace in 1883.<sup>252</sup> In October 1896, Queen Victoria approved Wei Yuk's appointment,<sup>253</sup> making him the fourth and last Chinese unofficial member of the Legislative Council during her reign.

### *E. The Two Empires*

Two-tiers of territories emerged as the British Empire entered the twentieth century. Joseph Chamberlain—Secretary of State for the Colonies from July 1895 to September 1903—illustrated this point. In that role, he contributed to imperialism in the last years of Queen Victoria's reign. He announced in a speech in November 1896: "we acquire new territory and develop it, develop it as trustees of civilization for the commerce of the world."<sup>254</sup> This sentiment echoes his letter to Governor Robinson as well. Elsewhere, Chamberlain talks about the British Empire's "duty" to govern because of the British race's special quality: "I believe that the British race is the greatest of governing races that the world has ever seen."<sup>255</sup> In an 1897 speech, he claimed "we are a great governing race, predestined by our defects, as well as by our virtues, to spread over the habitable globe, and to enter into relations with all the countries of the earth."<sup>256</sup> Perhaps the best summary of his view are reflected in a statement at the Royal Colonial Institute in March 1897, entitled *The True Conception of Empire*: "In carrying out this work of civilization we are fulfilling what I believe to be our national mission, and we are finding scope for the exercise of those faculties and qualities which have made of us a great governing race."<sup>257</sup>

Sir Henry Arthur Blake, Governor of Hong Kong from 1898 to 1903, was the last governor during Queen Victoria's reign.<sup>258</sup> Blake's

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<sup>251</sup> *Id.* at 16.

<sup>252</sup> *Id.*

<sup>253</sup> *Government Notification, No.403*, H.K. GOV'T GAZETTE 1014 (1896) (Queen Victoria's approval of the appointment).

<sup>254</sup> JOSEPH CHAMBERLAIN, *British Trade and the Expansion of the Empire*, in FOREIGN & COLONIAL SPEECHES 140, 144 (1897) (speech at Birmingham Chamber of Commerce, Nov. 13, 1896).

<sup>255</sup> JOSEPH CHAMBERLAIN, *A Young Nation*, in FOREIGN & COLONIAL SPEECHES 82, 89 (1897) (speech at Imperial Institute, London, Nov. 11, 1895).

<sup>256</sup> JOSEPH CHAMBERLAIN, *A Year's Work*, in FOREIGN & COLONIAL SPEECHES 229, 235 (1897) (speech at Birmingham, Jan. 30, 1897).

<sup>257</sup> JOSEPH CHAMBERLAIN, *The True Conception of Empire*, in FOREIGN & COLONIAL SPEECHES 241, 244 (1897) (speech at Royal Colonial Institute, Mar. 31, 1897).

<sup>258</sup> FRANK WELSH, *A HISTORY OF HONG KONG* 330 (1997); G. R. SAYER & D. M. E. EVANS, *HONG KONG 1862–1919* 80–88 (1985) (Chapter 9. Sir Henry Blake 1898–1903). Before coming to Hong Kong, Blake had served as Governor of Bahamas from 1884 to

position on self-governance of Hong Kong can be seen from remarks he made at the Royal Colonial Institute. This was an occasion when Sir Hubert E. H. Jerningham read his paper "Colonial Administration" at the Royal Colonial Institute in April 1902.<sup>259</sup> Jerningham was the former Governor of Mauritius 1892–97, then Governor of Trinidad and Tobago between 1897 and 1900. In the paper, Jerningham argues for a moderate policy in British colonial policy. Looking back to the history of colonization, Jerningham observed, "The success of English colonization, . . . though maybe not less cruel or despotic than other nations, and possibly more so at the start, appears, however, to be mainly attributable to the fact that man as man, irrespective of race or color, has been treated as such, and has been educated from the beginning to appreciate . . . the blessing of freedom from arbitrary arrest, and hence the blessing of liberty."<sup>260</sup> As a former governor of Crown Colonies, Jerningham advocated more autonomy to the colonies in management of their own local affairs, and an obligation for the British Empire to loosen rather than tighten the strings.<sup>261</sup>

Sir Henry Blake spoke immediately after Jerningham finished reading his paper: "I do not believe there is any Eastern race at present that has any idea of representative government in the form in which we are accustomed to see representative government act in our self-governing Colonies."<sup>262</sup> Blake continued:

I think it would be necessary for us to consider the different conditions of the two sets of Colonies, because we may briefly, I think, divide our Colonies into two classes—the self-governing, with entirely uncontrolled local autonomy and with uncontrolled financial arrangements under which they go into the markets of the world without any guarantee, expressed or implied, by the Imperial Government; and, next, our Crown Colonies, whose finances are ultimately controlled by the Imperial Government with an

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1887, Governor of Newfoundland from 1887 to 1888, and Captain-General and Governor of Jamaica from 1889 to 1897. After his service in Hong Kong, he continued his career as a colonial officer, and served as Governor of Ceylon from 1903 to 1907. *See Blake, Sir Henry Arthur, WHO'S WHO 1899* 212 (London, Douglas Sladen ed. 1899).

<sup>259</sup> Sir Hubert E. H. Jerningham, *Colonial Administration*, 6 J. OF THE ROYAL COLONIAL INST. 317, 317 (1902).

<sup>260</sup> *Id.* at 326.

<sup>261</sup> *Id.* at 332.

<sup>262</sup> *Id.* at 333.

implied guarantee which enables them to borrow money at a lower rate of interest.<sup>263</sup>

Blake's view was more broadly shared by other governors. Sir Charles Bruce, the Mauritius Governor from 1897 to 1903, sided with him. In his paper, also read at the Royal Colonial Institute in 1905,<sup>264</sup> Bruce stated: "The whole idea of government by popular representation . . . is generally inconsistent with the religion, natural laws, and usages of the people of tropical climes."<sup>265</sup> Bruce believes that "[t]he justification of Responsible Government in a Colony rests on the ability of the inhabitants of European descent to form a permanently settled homogeneous community in a climate favorable to their development in the same physical, ethical, and political conditions that have produced the European."<sup>266</sup> Bruce held this view, though he admitted that "[t]he racial distinctions thus created are inconsistent with the ethical principle of social equality which underlies Responsible Government."<sup>267</sup>

Lord Milner, Governor of both the Cape Colony and the Transvaal and Orange River Colony in South Africa, agreed with Sir Henry Blake and Sir Charles Bruce. In 1908, Lord Milner read a paper at the Royal Colonial Institute entitled *The Two Empires*.<sup>268</sup> Lord Milner explained: ". . . when speaking of the British Empire . . . we could have two generally recognized appellations by which to distinguish the two widely different and indeed contrasted types of State of which that Empire is composed."<sup>269</sup> He further elaborated the differences by race: "I am thinking of the contrast between the self-governing communities of European blood, such as the United Kingdom, Canada, Australia, and New Zealand, and the communities of colored race, Asiatic, African, West Indian, or Melanesian . . ."<sup>270</sup> With a bit of hesitation, Lord Milner admitted: "I am almost ashamed to utter in your presence such a platitude as that the idea of extending what is described as 'Colonial Self-Government' to India, which seems to have a fascination for some untutored minds, is a hopeless absurdity."<sup>271</sup> Except for his off-guard candidacy, there is no doubt that Lord Milner spoke for many people sitting in the Royal Colonial Institute's audience that day.

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<sup>263</sup> *Id.*

<sup>264</sup> Sir Charles Bruce, *The Crown Colonies and Places*, 36 PROC. OF THE ROYAL COLONIAL INST. 210, 210 (1905).

<sup>265</sup> *Id.* at 224.

<sup>266</sup> *Id.* at 215.

<sup>267</sup> *Id.*

<sup>268</sup> Alfred Milner, *The Two Empires*, 39 PROC. OF THE ROYAL COLONIAL INST. 329, 329 (1908).

<sup>269</sup> *Id.* at 329–30.

<sup>270</sup> *Id.* at 330.

<sup>271</sup> *Id.* at 333.

## CONCLUSION

By the end of Queen Victoria's reign, representative democracy was denied in British colonies in the "Oriental" societies—Egypt, British India, Ceylon, Burma, the Strait Settlements, together with Hong Kong. They would have to wait for the British Empire's collapse after World War II. This denial of representation was based on the fundamental consideration of race.

Hong Kong's history offers a unique perspective because of its contemporary contradictions: in 1843, when Hong Kong was established as a Crown Colony under Queen Victoria, the British Empire had begun introducing "responsible government" in other British colonies, like Canada, Australia, and South Africa. By the end of Queen Victoria's reign, there was a long list of British colonies where a certain level of democracy has been established.<sup>272</sup> Yet, Hong Kong never had the chance. As one of the Empire's most prosperous and successful colonies, colonial administrators—from Secretary of State for the Colonies in London to the governors and senior officers in Hong Kong—had to deal with the question from time to time: why not Hong Kong? Their back-and-forth communications between Hong Kong and London in official dispatches reflect the British officials' internal logic and rationale. It was based on the fundamental consideration of race. In April 1842, four months before the Treaty of Nanking concluded, Lord Stanley confessed to the governor of Cape of Good Hope in a dispatch: "The law, no doubt, especially since the abolition of slavery, places all the Queen's subjects, in all the possessions of the Crown, on a footing of perfect civil equality; yet in many of them it has been found to be a task of almost insuperable difficulty, to reconcile the principles of free institutions with this legal equality between different races."<sup>273</sup> The British Empire under Queen Victoria only found reconciliation through separating "two empires" and

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<sup>272</sup> In May 1905, in response to Parliamentary inquiry, the Colonial Office prepared a paper showing a list of British colonies where representative institutions have been introduced. The list included Canada (1867), Manitoba (1870), British Columbia (1870), Vancouver Island (1849), North West Territories (1875), Newfoundland (1855), Commonwealth of Australia (1900), New South Wales (1855), Victoria (1851), Queensland (1859), South Australia (1851), Tasmania (1851), Western Australia (1870), New Zealand (1852), Fiji (1904), Cape of Good Hope (1872), Natal (1856), Malta (1849), Mauritius (1885), and Jamaica (1884). Return Showing the Methods in Each Case by Which Representative Institutions Have been Conferred upon British Colonies since the Accession of the Late Queen Victoria (May 2, 1905), in 142 PARLIAMENTARY ACCOUNTS AND PAPERS 13 (1905). This was in response to the inquiry in March 1905, Dr. MacNamara asked Lyttelton, Secretary of State for the Colonies, at the House of Commons if he could provide papers showing the methods of introducing representative institutions in British colonies. *Id.*

<sup>273</sup> Copy of a Dispatch from Lord Stanley to Governor Sir George Napier, K. C. B. (Apr. 15, 1842), No.26, in 7 PARLIAMENTARY PAPERS 501, 503 (1850).



ruling them differently. Abolitionist Lord Brougham stated in the House of Lords in 1838 “that distinction of color gives no title to oppression.”<sup>274</sup> That promise was never fulfilled.

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<sup>274</sup> Brougham, *supra* note 27, at 278.